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# CANADIAN INSTITUTE FOR ENVIRONMENTAL LAW AND POLICY

L'INSTITUT CANADIEN DU DROIT ET DE LA POLITIQUE DE L'ENVIRONNEMENT

## **Financial Assurance Requirements For the Aggregate, Waste Management and Recycling Industries in Canada: Background Document**

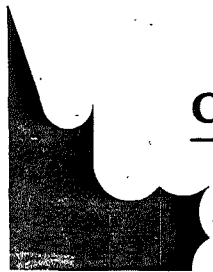
A Report Prepared for the  
Department of Finance, Government of Canada

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Financial Assurance Requirements For the  
Aggregate, Waste Management and Recycling

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by Karen Clark LLB MA, Research Associate  
Canadian Institute for Environmental Law and Policy  
January, 1997





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**FINANCIAL ASSURANCE REQUIREMENTS  
FOR THE AGGREGATE, WASTE MANAGEMENT  
AND RECYCLING  
INDUSTRIES IN CANADA**

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**The Canadian Institute for Environmental Law and Policy**



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## **Introduction**

The report that follows provides a detailed description of provincial, territorial and federal regulatory requirements for environmental restoration in the aggregates, recycling and waste disposal industries with particular emphasis on the role of financial assurances against environmental liabilities.<sup>1</sup>

The report was prepared by the Canadian Institute of Environmental Law and Policy (CIELAP) for the Department of Finance of the Government of Canada. CIELAP was established in 1970 in response to the continuing need for objective analysis in environmental law and policy. Independent of both government and industry, CIELAP is a national, charitable, not-for-profit research and education organization.

The report covers a great deal of information, a large portion of which is quite technical. The following description of how the information is organized may help readers looking for specific information. Each section of the report deals with a separate territory or province: the Yukon Territory; the Northwest Territories, British Columbia, and so on. Each section is further broken down into two or three areas of activity: waste management/recycling (as one subject heading) and aggregates, or waste management, recycling (as a separate subject-heading) and aggregates. Where waste amangement and recycling are dealt with as a single topic, it means that the particular jurisdiction includes recycling under the broader topic of waste management.

Under each area of activity, the ministry responsible for administering the applicable legislation is identified, and then the applicable acts and regulations are listed. Following these lists are several sub-sections. The first is "Legislative Requirements" which describes in detail the provisions applicable to financial assurance for the identified activity. The next sub-section is "Ministry Response to Questions" which details information received from Ministries in response to the questions posed to them (see Appendix A). This subsection is further broken down into as many as four sub-sub-sections, dealing with Ministry responses to specific questions posed by Finance Canada for this report.

To aid in pin-pointing information of particular interest, the reader is referred to the Table of

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<sup>1</sup> I wish to acknowledge the invaluable assistance provided for this report by Matthew Akman of Econalysis Consulting Inc. who advised me on the content and focus of this report. Thanks, too, to Chantal Saxe for her help with the legislative research. Particular thanks are due to CIELAP Board member Julie Pelletier of the Quebec Environmental Law Centre and to Claudia Santoro for their assistance in finding the right people to talk to in Quebec. And thanks to Greg Jenish who designed the chart at the end of this report. Most of all, I wish to thank the dozens of Ministry staff across the country who generously gave their time to provide the information that makes up a large part of this survey.



Contents, which should serve as an index. The reader is also referred to the summary observations below. Finally, the reader is referred to the chart (Appendix C) setting out the dollar amounts (where the information was available) of financial assurances, by type of financial instrument, by province and territory.

The methodology by which this information was acquired is described in Appendix A. Appendix B lists the names, phone numbers, and fax numbers of the provincial and territorial ministry staff who provided the information.

### **A Note On The Research**

The particular challenge in gathering all of the information below was locating the proper people to talk to in thirteen different jurisdictions. The challenge was increased somewhat by the fact that all of the ministries contacted are undergoing restructuring to one degree or another. The tight time frame in which this report was to have been prepared presented challenges of its own. While all of the jurisdictions contacted were very helpful, it was difficult for some, in the time provided, to give full and detailed answers. There are, therefore, some unavoidable gaps in the information below.

### **Summary Observations**

Our research has revealed a wide variety of financial assurance requirements across the country. No "patterns" emerge *per se*. All jurisdictions have laws or policies in place that provide for financial assurance of one kind or another. Only one province, Prince Edward Island, and the two territories, presently hold no financial assurance for the three areas of activity of particular interest to this report.

The following sections summarize certain elements of the provincial and territorial requirements for financial assurance. They are provided to point to possible areas of interest to Finance Canada. Detail has been sacrificed for the sake of brevity. The reader is referred to the body of the report for full and detailed descriptions of the general points made below.

### **Most Common Forms of Acceptable Security**

Of all the jurisdictions surveyed, only British Columbia appears to be contemplating "alternative" forms of security such as parent corporate company guarantees or a pledge of assets.<sup>2</sup> For the most part, most jurisdictions rely on the "traditional" forms of security: cash, certified cheque, government bonds, performance bonds, and irrevocable letters of credit. Most also accept insurance policies, either alone or in addition to another form of security.

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<sup>2</sup> See discussion below in 3.2(b) Ministry Response to Questions.

For aggregate extraction, in jurisdictions that require security, cash is most common, and is usually paid on either a per tonne (annually) or per hectare basis (except in Alberta, which still works in Imperial acres). The single exception is, again, British Columbia, which has a newly-developed Mines Reclamation Policy that determines the kind, amount and schedule for payment of security on a case-by-case basis.

For waste management, including hazardous waste management and dangerous goods transport, cash is also an acceptable security, but letters of credit, performance bonds and insurance are more common. These assurances -- with the single exception of Quebec's proposed post-closure environmental trust funds -- are generally posted as a one-time lump sum security. Quebec's proposed assurance plan will require periodic payments based on the volume of waste disposed.

Four jurisdictions in Canada -- Alberta, Manitoba, New Brunswick and Nova Scotia -- have special recycling legislation for beverage containers, waste tires, multi-material recycling, or one or some of the above which require financial assurance. As noted below, the security is not against environmental liability *per se*. Rather, the various acts require that "stewards" or "agents" participating in the recycling process post security against the eventuality that they cannot meet their financial commitments to other parties participating in the recycling programme. These programmes accept the "traditional" forms of security.

#### **Provisions in Place for Companies to Recapture Excess or Unused Funds**

Virtually all jurisdictions that provide for financial assurance also provide, when certain conditions have been met, for the return of excess or unused funds to the person who posted the security. The objective in all jurisdictions for requiring security in the first place is to ensure that non-public funds are available to restore or rehabilitate damaged or contaminated sites. Therefore, when sites are restored or rehabilitated according to the terms of a permit, rehabilitation plan, the applicable Act and regulations, then the security will be returned to the party who posted it.

Some jurisdictions (Alberta, for example) also provide for decreases, and increases, in the amount of financial assurance required in case of changing conditions. Partial remittance is permitted in some jurisdictions (Ontario, for example) when partial rehabilitation has been completed. The spokesperson for Ontario noted in his response to our questions that, annually, approximately \$5 million is paid into reclamation accounts for aggregate operations and \$3 million is refunded. Ontario was the only jurisdiction to provide such detailed information.

Most jurisdictions also provide for the "calling in" of posted securities in the case that either the terms of the permit, Act or regulations have been violated and damage to the environment has occurred. Security is "forfeited" in this event, and the Minister or some other appointed decision-maker for the Crown may use some or all of the amount of the security to restore the site. Most jurisdictions also provide that, if the cost to restore the site is less than the amount of the security, then the person providing the security shall be reimbursed the excess amount. Most

also provide that, if the security is insufficient to cover the cost of reclamation, the outstanding balance is a debt the person who provided the security owes to the Crown.

### **Controls in Place on Amounts Deposited**

By “controls on amounts deposited” we mean what are the provisions in place to determine how much security shall be paid. This question may be of interest if a change to the tax system creates, by way of providing some tax relief, an “incentive” for companies to use their financial assurance requirements as tax shelters.

There are, generally speaking, four different mechanisms for controlling the amount of security required. The first mechanism is the “flat” or “maximum” amount set out in the legislation or regulation. For example, the *Territorial Land Use Regulation* (TLUR) provides for securities to be paid, to a maximum of \$100,000. Quebec regulations (soon to be revised) set flat rates for security for landfill sites of \$25,000, \$50,000 and \$100,000, depending on the number of people served by the landfill.

The second mechanism is the “per unit” amount set, most commonly for aggregate extraction securities. These are set at a per tonne, per hectare (or per acre) rate, and vary according to extraction rate and site size. These can be capped by a “maximum” rate.

The third mechanism is the “discretionary” amount set either by the Minister or the Director, or some other designated decision-maker for the Crown, usually on the basis of legislative or policy guidelines. The “discretionary” amount may also have a “maximum” limit. Determinations as to the amount and kind of security required are based on a range of criteria, but often include consideration of such factors as the estimated cost of restoration, the environmental sensitivity of the site, past performance of the applicant, and so on. Some jurisdictions -- British Columbia, Alberta, Newfoundland -- are actively considering or formulating risk assessment as the chief criterion for determining the amount and kind of security required.

The last mechanism is the “auto-discretionary” amount, where security is required on the basis of an applicant’s estimate of the cost to restore a site, including the cost of post-closure monitoring and rehabilitation. Alberta and British Columbia use this method. Both jurisdictions also provide that the “auto-discretionary” amount set by the proponent may be altered at the discretion of the Minister or some other designated decision-maker for the Crown.

One last observation: irrespective of the control methods used to set or limit the amounts posted as financial assurance, no reclamation fund in the country is currently suffering from an excess of funds. If there is a general tendency to note nation-wide, it is that jurisdictions are trying, with due emphasis on fairness and equitable impacts, to increase the amount of financial assurance held against environmental liability.

## **Financial Assurance Vehicles -- Who Holds Assurances, And Where**

There is a wide variety -- and no consistent pattern -- among Canadian jurisdictions regarding the nature of the accounts or funds where financial assurances are held. Finance Canada expressed a particular interest in knowing which jurisdictions provide for periodic payments of financial assurance into trust funds. That answer follows, along with a general description of the kinds of accounts and/or funds presently employed.

### **Periodic Payments into Trusts**

We could find only three examples where jurisdictions require periodic payments of financial assurance.

At the rate of \$0.08/tonne extracted, Ontario aggregate producers must pay an annual security. The regulation provides that the security shall be held in an account in the operator's name. There are currently 4,800 such "trust" accounts -- one for each permit -- in the province of Ontario. Planned changes to the legislation will transfer the monies in these accounts (\$60 million) to the Aggregate Resources Trust. Once the legislation is in force, all future security payments for aggregate operations will be made to the Aggregate Resources Trust.

In Quebec, since September, 1995, seven waste disposal sites have received authorization to operate, with one condition of operation being that they establish post-closure environmental trust funds. Six of the seven sites have established trusts, and, although no payments have been made yet, periodic payments based on the volume of waste disposed shall commensurate with the operation of the authorized sites. A proposed regulation will extend to operators of all waste disposal sites the obligation to establish an environmental trust fund. When the regulation comes into force, more than 200 trust funds may be needed if all sites presently active remain in operation.

Aggregate operators in Manitoba are required to pay an annual levy of \$0.10 for every tonne of aggregate produced in the preceding year. The payments are made to the Minister of Finance, who deposits the levies into the "Quarry Rehabilitation Reserve Account." The pits and quarries rehabilitation programme was introduced in 1992. Since the inception of the programme, approximately \$5.1 million in rehabilitation levies have been contributed to the Reserve Account.

### **Special Funds**

In virtually every other instance where financial assurance is required, the method is that of a one-time, lump sum (or security; or insurance policy) provided to the Ministry. The Ministry then either deposits the sum into a special account, or holds the security, or, in the cases described below, assigns the sum or security to a special fund.

Mining operation applicants (including, but not necessarily always, applicants for aggregate operations) in British Columbia post security to the Mine Reclamation Fund. The ministry spokesperson in British Columbia averred that securities required for aggregate operations could be paid into this fund, but, apparently, none have been so far.

Alberta has two funds: the Environmental Protection and Enhancement Fund, and the Environmental Protection Security Fund. Security required for waste management sites and aggregate extraction operations (on private land) are held in the Environmental Protection Security Fund. If the security is forfeited (if the person who has posted the assurance is in violation of a term of his permit, or any relevant Act or regulation) the Minister directs the Provincial Treasurer to transfer the security from the Environmental Protection Security Fund to the Environmental Protection and Enhancement Fund. Once transferred, the funds may be expended to reclaim and rehabilitate the site. Aggregate operations on publicly-owned land are subject to a different regime. Security is paid to the administering Department and the Department holds the security in a separate account; the security is not held in the Environmental Protection Security Fund.

Aside from these funds, there are no special vehicles for holding financial assurances for environmental restoration.

#### **Provinces/Territories that Require Financial Assurance From Municipalities**

Once again, no particular pattern emerges among the provinces and territories regarding which require financial assurances from municipalities.

Provinces/Territories that require no financial assurance from municipalities for waste management, recycling or aggregate are: the Yukon Territory, the Northwest Territories<sup>3</sup>, British Columbia,<sup>4</sup> Alberta,<sup>5</sup> Saskatchewan, and Prince Edward Island.

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<sup>3</sup> The Water Boards established under the Yukon Waters and and the Northwest Territories Waters Acts and administered by the federal Departments of Indian Affairs and Northern Development in each of those territories *may* require financial assurance, as a term or condition of operations for any project owned or operated by a municipality -- including a waste management site, recycling operation or aggregate extraction site. However, no such requirement has been made to date.

<sup>4</sup> There are rare exceptions to the general policy in British Columbia that municipalities are not required to provide financial assurance.

<sup>5</sup> As noted in the body of the report, this policy may change regarding waste management sites. As for aggregate extraction on public lands, a policy change was recently approved whereby security deposits are no longer required to be paid by municipal governments if the sand

In Manitoba, for waste management, Ministry policy is that the legislative provisions which require financial assurance should apply equally to private and public-sector parties. In practice, however, the Ministry has required financial assurance from only one municipality. Where a municipality is the owner/operator of an aggregate extraction operation, the municipality must pay the rehabilitation levy.

In Quebec, municipalities are presently exempted from financial assurance requirements for waste management, but it has been proposed that this should change. The regulatory provisions regarding financial assurance for aggregate extraction operations (pits) apply to municipalities.

In Ontario, New Brunswick, Nova Scotia and Newfoundland, municipalities are exempt from financial assurance provisions for waste management, but are subject to financial assurance requirements for aggregate operations.

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and gravel is required for public works purposes and not sold in competition with the private sector.

## 1. Yukon Territory<sup>6</sup>

### Government of the Yukon

#### 1.1 Waste Management

Ministry Responsible: Ministry of Renewable Resources

Applicable Legislation: *Environment Act*, S.Y. 1991, c.5, ss. 167-169; *Special Waste Regulations* 1995/047; *Pesticides Regulations* 1994/125 s.30.<sup>7</sup>

##### 1.1 (a) Legislative Requirements

The Act provides that the Minister may include as a requirement in a permit for activities the Act regulates, including waste management activities, or for an environmental protection order, that the person to whom the permit is issued or the order is directed provide financial assurance to the Minister. The assurance may be for the performance of any action specified in a permit or order. Financial assurances may also be applied to measures to prevent significant adverse effects upon and after the closure or cessation of operations of an activity, including post-closure monitoring.<sup>8</sup>

The Act also provides that, after giving reasonable notice, the Minister may amend a permit or

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<sup>6</sup> Responsibility in the territories for waste management, resource extraction and other environmentally-related matters falls under, in the words of one government staff member, "a mosaic of jurisdictions." The "mosaic" can be described as follows. In both Territories, all communities and roads come under the jurisdiction of the territorial governments; federal lands are under the jurisdiction of the federal Department of Indian Affairs and Northern Development (DIAND) and are generally administered under the *Territorial Lands Act*, R.S.C, 1985, c. T-7 (TLA). Some lands in the Yukon and NWT are subject to aboriginal land claims, and are managed under the terms of a land claim settlement. In 1999, a new jurisdiction, Nunavut, will add a new piece to the mosaic. Due to the time constraints in preparing this report, the discussion focuses on the roles of and legislation relied on by the Territorial governments of the Yukon and the Northwest territories, and on DIAND.

<sup>7</sup> The Pesticide Regulation provides at section 30 that the Minister may require a permit applicant or holder to provide financial security to the government and to carry insurance. This comes under the same Act as waste management, but pesticides do not otherwise intersect with the three areas of activity dealt with in this report.

<sup>8</sup> The Yukon *Environment Act*, S.Y. 1991, c.5, s. 167(1)(a) and (b).

order to change a requirement as to financial assurance contained in the permit or order.<sup>9</sup>

Where the Minister has made a permit conditional on the provision of financial assurance, the Minister may suspend the permit and order the permit holder to cease or restrict its operation for which the permit is required until the requirements for the financial assurance are met.<sup>10</sup> Any person under such an order from the Minister has his or her right to hold a permit suspended until the financial assurance is provided.<sup>11</sup>

The Minister may release all or part of a financial assurance to the permit holder where the Minister is satisfied that all or part of the financial assurance is no longer required.<sup>12</sup>

If on reasonable and probable grounds the Minister believes that any condition required by a permit or order for which a financial assurance was given has not or will not be carried out, then the Minister may order the financial assurance to be realized for the performance of the condition.<sup>13</sup> The order shall be directed to the person to whom the permit or order was issued and to any person that to the knowledge of the Minister has provided the financial assurance on the behalf of the person holding the permit, or to the successor or assignee of that person.

Upon issuing the order the Minister may use any of the financial assurance provided for the purpose of effecting the performance of the conditions for which the financial assurance was originally posted.<sup>14</sup>

The Act also provides that the Commissioner in Executive Council may make regulations governing the definition of financial assurance and the procedure for giving, realizing or releasing financial assurances. To date, no regulations have been made.

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<sup>9</sup> Supra, s. 167(3).

<sup>10</sup> Supra, s. 167(4).

<sup>11</sup> Supra, s. 167(6).

<sup>12</sup> Supra, s. 168.

<sup>13</sup> Supra, s. 169(1) and (2).

<sup>14</sup> Supra, s. 169(4).



### **1.1(b) Ministry Response to Questions**

According to Bryan Levia, Coordinator, Waste Management, Environmental Protection and Assessment Branch, Ministry of Renewable Resources, the financial assurance mechanisms described above have not been used to date. There are, therefore, no financial assurances being held by the territory for environmental liability arising from waste management operations. No plans are in currently in place to require assurances any time in the foreseeable future.

### **1.2 Recycling**

Ministry Responsible: Ministry of Renewable Resources

Applicable Legislation: *Environment Act*, S.Y. 1991, c.5, Part 8; and *Recycling Fund Regulations* 1992/135; *Beverage Container Regulation* 1992/136.

#### **1.2(a) Legislative Requirements**

See above for description of financial assurance requirements under the Act, which have, to date, not been used.

#### **1.2(b) Ministry Response to Questions**

According to Pat Paslwaski, Standards and Approvals Officer, Renewable Resources, while the Act requires permit holders to provide financial assurance, permits *per se* are not required under the *Beverage Container Regulation* or the *Recycling Fund Regulation*. Recycling depots operate according to a depot "registration" which is not a permit as defined by the Act. The registration is a separate administrative tool intended to legitimize depots and provide financial assistance to depots for paying refunds, handling and shipping beverage containers.

There are no plans in place to change either the Act, the regulations or any other provision pertaining to the use of financial assurances.

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**Department of Indian Affairs and Northern Development<sup>15</sup>****1.3 Aggregates**

Applicable Legislation: *Territorial Lands Act*, R.S.C., 1985, c.T-7; *Yukon Waters Act*, S.C. 1992, c.40, s. 17. See also: *Territorial Land Use Regulations* (C.R.C. 1978, c.1524). *Territorial Quarrying Regulations* (C.R.C. 1978, c. 1525) Ss. 4, 8(1), 11(2), 3(); Sched.: am. SOR/96-111(Gaz.6/3/96, p. 870)

**1.3(a) Legislative Requirements**

The *Territorial Land Use Regulations* provide that, for land uses subject to the regulations, including aggregate extraction, in order to ensure that a permittee complies with the terms and conditions of his permit and the regulations, the Engineer<sup>16</sup> may include with the permit a condition that the permittee deposit with the Minister a security deposit not exceeding \$100,000.00.<sup>17</sup> The regulations further provide that the land use operation shall not begin until a security deposit has been deposited with the Minister in the form of:

- a promissory note guaranteed by a chartered bank and payable to the Receiver General
- a certified cheque drawn on a chartered bank in Canada and payable to the Receiver General
- bearer bonds issued or guaranteed by the Government of Canada or
- a combination of the above.<sup>18</sup>

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<sup>15</sup> It is generally the case in the Territories that municipalities and communities, under the jurisdiction of the Territorial governments, are responsible for waste management and recycling. The discussion of the Department of Indian Affairs and Northern Development, therefore, for the most part deals with aggregates. Please note that *there are exceptions* to this generalization, but, due to the time constraints in preparing this report, the presumption is made that waste management and recycling are predominantly the concern of the Territorial governments and aggregates are predominantly the concern of DIAND.

<sup>16</sup> The TLUR defines "Engineer" as meaning "the person designated as Engineer under s. 4." This section provides that the Minister may designate any officer of the Department of Indian Affairs and Northern Development as Engineer.

<sup>17</sup> *Territorial Land Use Regulations*, (C.R.C. 1978, c. 1524) s. 36 (1).

<sup>18</sup> *Supra*, ss. 36(2) and (3).

Where a permittee has not complied with all the terms and conditions of the permit or regulations and the permittee's land use results in damage to the lands, the Minister may retain the whole of the security deposit or such portion of the security deposit as is required to restore the lands to their former condition.<sup>19</sup> Where the Minister retains a portion of a security deposit, the Minister shall return the remainder of the security deposit to the permittee.<sup>20</sup> Where the whole of a security deposit retained by the Minister is insufficient to cover the cost of restoring the lands to their former condition, the deficiency shall be collectable as a debt due to the Crown.<sup>21</sup>

The *Yukon Waters Act* applies to any activity that may result in emissions into a body of water in the territory, including aggregate extraction operations. The Act gives authority to the Yukon Water Board to require security from an applicant for a licence, a licensee or a prospective assignee of a licence to furnish and maintain security with the Minister.<sup>22</sup>

### 1.3(b) Ministry Response to Questions

#### *Administrative and Enforcement Requirements*

Mark Zrum, Head Land Use, Land Resources, Land Use Section of the Department of Indian and Northern Affairs noted that all lands administered by the Minister of Indian Affairs and Northern Development except for the lands which fall within the definition of Indian Act Lands are administered pursuant to the *Territorial Lands Act* and Regulations.

He also noted that the *Territorial Quarrying Regulations* (TQR), proclaimed in 1957, do not provide for environmental controls or for the imposition of financial assurance. The *Territorial Land Use Regulations* (TLUR) were proclaimed in 1972, and they allow for both environmental controls and security bonding. Currently, aggregate production requires permits under both regulations, and the security requirements of the TLUR *may* apply if the project warrants protection against environmental liability.

The financial assurance provisions under the TLUR are discretionary. In the past, according to Mr. Zrum, the department did not often require financial assurance. However, on the basis of the poor environmental performance of some operations, the department intends to require security more often in the future.

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<sup>19</sup> Supra, s. 36(5).

<sup>20</sup> Supra, s. 36(6).

<sup>21</sup> Supra, s. 36(7).

<sup>22</sup> *Yukon Waters Act*, S.C. 1992, c.40, s. 17.

The Department Land Use Manual, Land Use Administrative Procedures set out the criteria for when security may be required:

- where the land use occurs in critical resource areas
- where the applicant or permittee has a history of non-compliance
- where there is a large-scale project with potential for negative environmental impacts
- where there are site-specific environmental concerns
- where there are site-specific First Nations concerns
- where security has been posted for a similar program or comparable project

The Administrative Procedures specifically identify federal, territorial and municipal governments as excluded from financial assurance requirements.

The Procedures identify the following criteria to be applied to the question of the amount of security required:

- anticipated problems from the land use
- costs of mitigation and reclamation
- site-specific operating costs
- possible worst case scenarios
- resource values at risk
- costs of similar projects

For the reclamation and mitigation cost calculation, actual machine costs, labour and associated costs such as administration, transportation, materials and services are estimated.

As pertains to the *Yukon Waters Act*, to date, no financial assurances have been required for any waste management, recycling or aggregate extraction operations. Judy Doering of the Yukon Water Board noted that the kind of assurance required and the amount are considered on a case-by-case basis. Criteria used to determine the amount and form of the financial assurance include the applicant's past performance, total cost of closing, and post-closure monitoring and remediation. DIAND follows the general policy of not requiring financial assurance from other levels of government. However, according to Ms. Doering, financial assurance requirements may apply to municipalities, but none have been required to date.

*Impending Changes to the Legislative and Regulatory Framework*

There are proposed *Yukon Pits and Quarries Regulations* that will replace the *Territorial Quarrying Regulation*. Mr. Zrum noted that these regulations will modernize the management of surface materials as well as provide for environmental controls and security under one regulation. Section 32 of the proposed draft regulation provides that a condition of a licence or permit may be the requirement of depositing with the Minister financial assurance not exceeding \$1,000,000.

The forms of security under the proposed regulation are:

- a promissory note guaranteed by a chartered bank in Canada and payable to the Receiver General
- a certified cheque drawn on a chartered bank in Canada and payable to the Receiver General
- a bond guaranteed by the Government of Canada
- an irrevocable letter of credit issued by a Chartered bank in Canada or
- any other form of security satisfactory to the Minister.

The draft proposed regulation also provides that the security deposit shall be returned when a certificate of clearance has been issued. Where a permittee has not complied with all the terms and conditions of the permit, the Minister shall retain such part of the security deposit that the Minister considers justified by the circumstances. Where the Minister retains all or part of a security deposit, the Minister may use all or part of the deposit forfeited to restore the lands subject to the operation as nearly as possible to its condition prior to commencement of the operation.

*Applicability of Financial Assurance Requirements to municipalities*

As noted above, it is not the practice of the Department to impose security requirements on other levels of government. As also noted, for activities subject to the *Yukon Waters Act*, financial assurances may be required from municipalities, but none have been imposed to date.

*Owner/Operator Liability*

The permit holder is responsible for financial assurance.

*Nature and Amount of Financial Assurance Held*

At present there are no securities in place for aggregate extraction operations. Securities that are in place under the TLUR are for minor land use activities and are based on past performance. Most of the securities are less than \$10,000, and are cash or bank drafts. The amount of securities

held in total is approximately \$100,000.

## **2. Northwest Territories**

### **Government of the Northwest Territories**

#### **2.1 Waste Management**

Ministry Responsible: Department of Resources, Wildlife & Economic Development

Applicable Legislation: *Environmental Protection Act*, R.S.N.W.T. 1991, c.E-7.

##### **2.1(a) Legislative Requirements**

There are no provisions for financial assurance mechanisms under the *Environmental Protection Act*.

#### **2.2 Recycling**

Ministry Responsible: Department of Resources Wildlife & Economic Development

Applicable Legislation: *Environmental Protection Act*, R.S.N.W.T., 1991, c.E-7.

##### **2.2(a) Legislative Requirements**

There are no financial assurance requirements under the *Environmental Protection Act*.

##### **2.2(b) Ministry Response to Questions**

###### *Administration and Enforcement Requirements*

According to Chris Wolnik of the Environmental Protection Service, Department of Resources, Wildlife & Economic Development, the NWT recycling infrastructure manages only 3% of the total solid waste generated in the territory. NWT covers a very large land base, and is sparsely populated. These circumstances have evidently limited the opportunity for a "home grown" recycling and disposal industry sector. The services that do exist are provided by "southern" companies. As noted above, financial assurances are not required under the *Environmental Protection Act*.

The only other instance where financial assurances would be required for a waste management facility would be if the facility required a water licence to operate on federal lands. The operators of the facility would be required to put up a fee before the licence was issued. There are currently no facilities in the recycling and disposal industry sector that are subject to this

requirement.

*Impending Changes to the Legislative and Regulatory Framework*

The Environmental Protection Service of the Government of the NWT has initiated activities to develop an economic instruments program. There is, within the program, the potential for financial assurances to be used. An environment fund could potentially be the banking mechanism for revenues generated from any variety of economic instruments. The components of the programme have not yet been finalized.

**Department of Indian Affairs and Northern Development**

**2.3 Aggregate**

Applicable Legislation: *Territorial Lands Act*, R.S.C., 1985, c.T-7; *Northwest Territories Waters Act*, S.C. 1992, c. 39. See also: *Territorial Land Use Regulations* (C.R.C. 1978, c.1524); *Territorial Quarrying Regulations* (C.R.C. 1978, c. 1525) Ss. 4, 8(1), 11(2), 30; Sched.: am. SOR/96-111(Gaz.6/3/96, p. 870)

**2.3(a) Legislative Requirements**

As in the Yukon Territory, the *Territorial Land Use Regulations* provide that in order to ensure that a permittee complies with the terms and conditions of his permit and the regulations, the Engineer may include with the permit a condition that the permittee deposit with the Minister a security deposit not exceeding \$100,000.00.<sup>23</sup>

The *Northwest Territories Waters Act* gives authority to the Northwest Territories Water Board to require security from an applicant for a licence, a licensee or a prospective assignee of a licence to furnish and maintain security with the Minister.<sup>24</sup> No such security requirement has been made for an aggregate, waste management or recycling operation in the NWT.

**2.3(b) Ministry Response to Questions**

*Administrative and Enforcement Requirements*

Annette McRoberts, Manager, Land Administration, Department of Indian and Northern Affairs,

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<sup>23</sup> *Territorial Land Use Regulations*, (C.R.C. 1978, c. 1524) s. 36 (1).

<sup>24</sup> *Northwest Territories Waters Act*, S.C. 1992, c.39, s. 17.



confirmed the legislative requirements described above. She also notes that, when a land use permit does contain a provision for a security deposit, it is a prerequisite that the deposit be submitted prior to commencement of operations. If the deposit is not made and operations commence, the land use permit is suspended and the operator can be fined up to \$5,000.00 per day of operation without security posted. Some considerations that are taken into account in determining the amount of security are: past performance; probability of environmental damage; ability of applicant to pay the costs of remediation of the site.

*Impending Changes to the Legislative and Regulatory Framework*

Ms. McRoberts notes that there are no proposed changes to the legislation that would affect the utilization of financial assurance mechanisms. She did note that regulations under the *McKenzie Valley Resource Management Act* address security deposit requirements. There was insufficient time in preparing this report to determine whether these will impact on waste management, recycling or aggregate production.

*Applicability of Financial Assurance Requirements to Municipalities*

It is generally the policy in the territories that financial assurance is not required from other levels of government.

*Owner/Operator Liability*

The owner (or lease holder) would be responsible for providing the financial assurance.

*Nature and Amount of Financial Assurances Held*

Financial assurances range between \$500.00 and several million dollars depending on the type, scope and size of an operation. Most securities are provided in the form of a promissory note guaranteed by a chartered bank in Canada and payable to the Receiver General; a certified cheque drawn on a chartered bank in Canada; a bond guaranteed by the Government of Canada; an irrevocable letter of credit issued by a chartered bank of Canada or any other form of security satisfactory to the Minister.

Ms. McRoberts notes that DIAND currently has 18 leases in the Northwest Territories that have a provision for security varying between \$5,000 and \$20,000,000. Specific information regarding the types of security held, and the amount held per type, was not available. Nor was Ms. McRoberts able to provide information in the time available indicating which, if any, of the above securities apply to aggregate extraction.

### 3. British Columbia

#### 3.1 Waste Management and Recycling

Ministry Responsible: Ministry of Environment, Land and Parks

Applicable Legislation: *Waste Management Act*, S.B.C. 1982, c.41, s. 8. See also: *Special Waste Regulation*, B.C. Reg. 63/88.

##### 3.1(a) Legislative Requirements

Section 8(b) of the *Waste Management Act* provides that, in issuing a permit to introduce waste into the environment, to store special waste, or to treat or recycle special waste, the permit may require the permittee to give security in the amount and form subject to conditions the manager specifies.

The Act also provides that a manager may on his own initiative, require or alter security, and may specify the type, amount, or the conditions of giving security.<sup>25</sup> The *Special Waste Regulation* provides that the Director may issue a transport licence with such conditions as he considers necessary for the protection of the environment, including financial assurance.<sup>26</sup>

##### 3.1(b) Ministry Response to Questions

###### *Administrative and Enforcement Requirements*

R.J. Driedger, P.Eng., Director, Pollution Prevention & Remediation, Environment and Resource Management, Ministry of Environment Lands and Parks confirmed the information provided above. He also noted that the majority of financial securities are administered through the Ministry's regional offices.

###### *Impending Changes to Legislative and Regulatory Framework*

There are two potential changes to the Ministry's legislative framework that may affect the application and variety of financial assurances. The first is a draft *Municipal Sewage Regulation* that may require security from operators of private sewage treatment plant systems in residential developments. A capital fund that reflects treatment plant construction costs may have to be

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<sup>25</sup> *Waste Management Act*, S.B.C. 1982, c.41, s. 11(2)(c).

<sup>26</sup> *Special Waste Regulation*, B.C. Reg. 63/88, s. 45(4).

established along with an operation and maintenance fund. In the event that responsibility for operation of the private sewage treatment plant is assumed by a municipality, the capital fund may be used to help finance any required upgrades to the facility and the operation and maintenance fund may be transferred to help offset future operating costs.

#### *Applicability of Financial Assurance Requirements to Municipalities*

The Ministry makes special allowances for municipalities in some cases. A municipality is generally not required to provide security for the operation of a landfill. Under the draft Municipal Sewage Regulation, a security may not be required if the discharger is a municipality or part of a municipality under a local service area bylaw.

#### *Owner/Operator Liability*

Where the owner/operator of a waste management site is not the same party, the tenure holder, licensee or permittee is generally responsible for providing the financial assurance. However, under subsection 33.1(7) of the Waste Management Act, debts due to the government are recoverable from the owner of a waste management facility.

#### *Nature and Amount of Financial Assurance Held*

Financial assurance programmes are administered by regional offices in British Columbia. There was insufficient time given in order to prepare this report to contact every region. Approximate, and not always up-to-date information was obtained from the Municipal Waste Branch in Victoria. The information is set out in detail in the chart at the end of this report.

### **3.2 Aggregates**

Ministry Responsible: Ministry of Employment and Investment

Applicable Legislation: *Mines Act*, S.B.C. 1989, c. 56. ss. 10 and 12. B.C. Reg. 287/94 (orders the establishment of the mine reclamation fund described in section 12 of the *Mines Act*.)

#### **3.2(a) Legislative Requirements**

Section 10 of the *Mines Act* provides that a chief inspector may as a condition of issuing a permit for a mine (which includes aggregate extraction) require that the owner, agent or manager give security in the amount, form and subject to conditions specified by the chief inspector for mine reclamation and to provide for protection of, and mitigation of damage to watercourses affected

by the mine.<sup>27</sup> The chief inspector may also require that the owner, agent or manager shall deposit each year security in an amount and form satisfactory to the chief inspector so that, together with the deposit required by subsection 10(4) and calculated over the estimated life of the mine, there will be money necessary to perform properly all the conditions of the permit at the proper time and perform all the orders and directions of the chief inspector respecting the fulfilment of the conditions relating to the original issuance of the permit.<sup>28</sup> The chief inspector may impose additional conditions or changes in the existing conditions of a permit, including changes to the security required.<sup>29</sup>

Where the owner, agent or manager fails to perform and complete the program for reclamation or to comply with the conditions of the permit, the chief inspector may cancel the permit and order the owner, agent or manager to stop the mining operations and apply all or part of the security toward payment of the cost of the work required to be performed or completed.<sup>30</sup> While subsection (7) applies to "owners, agents, or managers" of a site, subsection (8) appears to apply only to managers: "The Manager shall maintain a valid and subsisting permit and no work shall take place in, on or about a mine without one."<sup>31</sup>

Section 12 provides that the Lieutenant Governor in Council may by regulation establish a fund to be known as the Mine Reclamation Fund. B.C. Reg 287/94 established the fund. The legislation provides that securities required under s. 10 of the Act shall be paid into the fund. The Act further provides that money received from an owner, agent or manager shall be credited to a separate account in the fund in the name of the mine.<sup>32</sup> The Minister may requisition payments from an account to refund money and interest earned on it to the owner when in the opinion of the chief inspector the security is no longer required for mine reclamation and protection of land and watercourses affected by the mine.<sup>33</sup>

### 3.2(b) Ministry Response To Questions

<sup>27</sup> Mines Act, S.B.C. 1989, c. 56, s. 10(4).

<sup>28</sup> *Supra*, s. 10(5).

<sup>29</sup> *Supra*, s. 10(6).

<sup>30</sup> *Supra*, s. 10(7).

<sup>31</sup> *Supra*, s. 10(8).

<sup>32</sup> *Supra*, s. 12(3).

<sup>33</sup> *Supra*, s. 12(4)(a) and (b).

*Administrative and Enforcement Requirements*

British Columbia has recently formulated a Mine Reclamation Security Policy that applies to mining generally as well as aggregate extraction. The British Columbia Advisory Council on Mining's Report and Recommendations to the Minister of Employment and Investment sets out in some detail the administrative and enforcement requirements for securities.

British Columbia is different from most other jurisdictions that require security for aggregate operations on a per tonne or per hectare basis. Aggregate operations in B.C., as are hard rock and coal mines, are subject to the process described in the policy, which reviews the basic steps of determining the kind and amount of security required:

- mine reclamation cost estimating
- assessing and identifying mine risks
- types of security

Among other things, the Task Force recommended the following:

*Policy Statement*

The Province will regulate mine reclamation security in British Columbia to provide reasonable assurance that government funds will not be used to cover reclamation costs. This will be accomplished through a combination of risk management and the posting of security in accordance with a formalized risk assessment process. The province recognizes that each mine is unique. Accordingly, the Ministry of Employment and Investment will implement its mine reclamation security policies with consideration given to the specific site and company involved.

*Policy Recommendations (incomplete list)*

...that the Ministry proceed to develop and adopt site-specific post-closure standards with respect to land use, productivity, soil survey and resloping where required. The objective of such specific standards is to more accurately identify and estimate reclamation costs.

...that the Ministry should recognize two different approaches to cost estimating: one based on government costing, and the other based on industry costing. The Ministry agrees that industry estimates of liability should be acceptable except in cases in which a high risk of default is identified based on a formal risk assessment...

...that the selection of a discount rate should be part of the process of negotiating long-term reclamation security with mine companies on an individualized basis...

...the adoption of formalized monitoring and evaluation of mine and corporate performance in accordance with the formalized risk assessment criteria...

... that the Ministry accept an expanded range of security instruments, including, under specific, well-defined conditions in accordance with a formalized risk assessment process:

- parent corporate company guarantee
- pledge of assets<sup>34</sup>

...the adoption of a definition of "full security" to include an expanded range of specified security instruments, as deemed appropriate, to cover the total approved reclamation liability...

...that 100% hard security be required at or prior to the point of closure for all single mine companies...

These policies (and others not enumerated) will be applied to aggregate operations at the permitting stage. Forms of security for aggregate operations are usually the conventional forms: letter of credit or cash.

#### *Impending Changes to the Legislative and Regulatory Framework*

Other than formalizing the risk assessment process recommended by the Task Force, there are no changes planned for the foreseeable future.

#### *Applicability of Financial Assurance Requirements to Municipalities*

Generally speaking, municipalities are not required to provide financial assurance. Some, in spite of this general rule, are required.

#### *Owner/Operator Liability*

"Owner" as defined by the *Mines Act* includes every person who is the immediate holder, proprietor, lessee or occupier of a mine, but does not include a person who receives only a royalty or rent from a mine, or who owns the surface rights to a mine, but not the minerals in it.

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<sup>34</sup> It should be noted that the Ministry of Finance and Corporate Relations had concerns about expanding the range of acceptable security instruments beyond the scope of the *Bonding Act*.

Section 10 provides that the owner, agent or manager shall apply for the permit, and that a condition of the permit may be the giving of security. Therefore, depending on the circumstances, either the owner or operator could be liable for payment of financial assurance.

*Nature and Amount of Financial Assurance Held*

Approximately \$3.75 million is currently held in safekeeping agreements, letters of credit and cash. See the chart at the end of this report for a detailed breakdown.





## 4. Alberta

### 4.1 Waste Management

Ministry Responsible: Department of Environmental Protection

Applicable Legislation: *Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3, s. 28, s. 30; s. 80; ss. 119-132; ss. 169-173. See also: *Waste Control Regulation* A.R. 192/96, ss. 27-33; and *Approvals and Registrations Procedure Regulation* A.R. 113/93, s. 9 (as amended); and *Conservation and Reclamation Regulation*, A.R. 115/93, ss. 16-24; and *Conservation and Reclamation Amendment Regulation* A.R. 167/96, ss. 11-12; and *Environmental Protection and Enhancement (Miscellaneous) Regulation*. A.R. 118/93.

#### 4.1(a) Legislative Requirements

The legislative framework in Alberta is a little complicated. At the risk of oversimplification, the provisions relating to waste management and financial assurance is as follows: The *Environmental Protection and Enhancement Act* regulates waste management. Par 9 of the Act, Division 1, deals with Waste Minimization and Recycling (this division will be discussed in greater detail below). Division 2 deals with Waste; Division 3 deals with Hazardous Waste. In these two divisions, there is one provision regarding financial assurance. Section 180 (under Hazardous Waste) provides that, where required by the regulations, security shall be provided for certain activities pertaining to hazardous waste.

The relevant regulation is the *Waste Control Regulation*. Part IV of the regulation provides for security. It states that where approval or registration is required for a waste management facility or a hazardous recyclable facility, security shall be required.

In order to determine if "approval or registration" for a particular waste management facility is required, reference must be made to the *Activities Designation Regulation*,<sup>35</sup> which designates which activities require approval or registration. In order to determine how to obtain approval for activities set out in the Designations Regulation, reference must be made to the *Approvals and Registrations Procedure Regulation*.<sup>36</sup>

For landfill sites and other waste management facilities, including hazardous waste facilities, the financial assurance provisions of the *Waste Control Regulation* apply.

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<sup>35</sup> A.R. 211/96.

<sup>36</sup> A.R. 113/93, as amended.

Alberta Reg. 192/96, the *Waste Control Regulation*, provides for financial assurance. Local authorities and the Crown are exempted from the regulation.<sup>37</sup> The regulation stipulates that where an approval or registration is required in respect of a waste management facility or a hazardous recyclable facility, the Director shall require the applicant to provide security before operation or reclamation of the facility commences.<sup>38</sup>

Security shall be in an amount determined by the Director to be sufficient to ensure completion of conservation and reclamation as required by the Act based on:

- the estimated costs of conservation and reclamation submitted by the applicant, approval holder or registration holder;
- the nature, complexity and extent of the facility's operations;
- the probable difficulty of conservation and reclamation, giving consideration to such factors as topography, soils, geology, hydrology and revegetation, and
- any other factors the Director considers to be relevant.<sup>39</sup>

The Director may increase or decrease the amount of security that is to be provided where:

- the cost of future conservation and reclamation changes;
- the extent of the operation of the facility is increased or reduced;
- the land or any portion of it is conserved and reclaimed;
- the conservation and reclamation plan in the approval is changed;
- the approval holder is conducting on the site more than one activity for which security is required;
- any other circumstances exist that may increase or decrease the estimated cost of conservation and reclamation.<sup>40</sup>

Security must be in one or more of the following forms:

- cash;
- cheques and other similar negotiable instruments payable to the Provincial Treasurer;
- Government guaranteed bonds, debentures, term deposits, certificates of deposit,

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<sup>37</sup> Alta. Reg. 192/96, *Waste Control Regulation*, s. 27(2).

<sup>38</sup> *Supra*, s. 27(1)(a) and (b).

<sup>39</sup> *Supra*, s. 28(1)(a),(b),(c) and (d).

<sup>40</sup> *Supra*, s. 29(1)(a),(b),(c),(d),(e), and (f).

- trust certificates or investment certificates assigned to the Provincial Treasurer;
- irrevocable letters of credit, irrevocable letters of guarantee, performance bonds or surety bonds in a form acceptable to the Director;
- any other form that is acceptable to the Director.<sup>41</sup>

Section 31 of the regulation provides for the terms under which security may be returned:

- where a reclamation or remediation certificate is issued in respect of all or part of a facility, the Minister may return all or part of the security provided.
- where an approval holder makes an application, upon partial completion of conservation and reclamation, the Minister may direct the return of part of the security;
- where the Minister decreases the amount of security, the Minister shall return part of the security provided;
- where no approval is issued, the Minister shall return all security provided.<sup>42</sup>

Financial assurance provided under various sections of the *Environmental Protection and Enhancement Act*, are held in the Environmental Protection Security Fund. If any security is forfeit, it is transferred to the Environmental Protection and Enhancement Fund. From this fund, the Minister or some Crown-appointed decision-maker, may expend funds in order to address the environmental damage that gave rise to the security being forfeit.

Section 28 of the *Environmental Protection and Enhancement Act* establishes the Environmental Protection and Enhancement Fund. The Fund shall be held and administered by the Provincial Treasurer in accordance with the Act.<sup>43</sup> Securities transferred to the Fund under subsection 28(10) of the Act, shall be paid into the Fund.<sup>44</sup>

Subsection 28(10) provides that the Provincial Treasurer shall in the manner and amounts and at the times directed by the Minister transfer to the Environmental Protection and Enhancement Fund security from the Environmental Protection Security Fund that is forfeited in accordance with the regulations, and security that is forfeited under any other enactment under the

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<sup>41</sup> Alta. Reg. 118/93, s. 5(3)(a),(b),(c),(d), and (e).

<sup>42</sup> Supra, s. 31(1),(2),(3) and (4).

<sup>43</sup> *Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3, s. 28(3).

<sup>44</sup> Supra, s. 28(5)(a).

administration of the Minister and is specified in the regulations.<sup>45</sup> The Act also provides that if at any time it appears to the Provincial Treasurer that there is money in the Fund that is not required for the purposes of the Fund, the Provincial Treasurer, with the approval of the Treasury Board, may transfer the money to the General Revenue Fund.<sup>46</sup>

#### **4.1(b) Ministry Response to Questions**

##### *Administrative and Enforcement Requirements*

John Shaw of the Department of Action on Waste confirmed all of the above, but also noted that it has only been since September 1, 1996 that the Department of Environmental Protection has had jurisdiction over landfill. Prior to this, landfill was under the jurisdiction of the Provincial Ministry of Health. There are approximately 300 such landfill sites in the provinces, about 225 of which are owned by municipalities which are exempt from financial assurance requirements.

Financial assurance that has been required for landfill operations are still held by Regional Health Authorities. Specifically, there are four assurances, posted by Laidlaw Environmental Services, Laidlaw Waste Systems, Browning-Ferris Industries Ltd., and WMI Waste Management of Canada. Each assurance is an irrevocable letter of credit. Information as to the amount of these assurances was not available.

To date, the Ministry of the Environment has not yet processed an approval that would require security to be posted to the Environmental Protection Security Fund.

##### *Impending Changes to the Legislative and Regulatory Framework*

According to Wayne Inkpen, also of the Department of Action on Waste, the Department is considering amending revisions that currently exempt municipalities from financial assurance requirements. Increasingly in the province, landfill operations are "partnerships" between municipalities and private sector companies. Financial assurances may be required of municipalities if a "partnership" ends and the municipality is the sole operator of a waste management site.

##### *Applicability of Financial Assurance Requirements to Municipalities*

As noted above, municipalities are exempt from financial assurance requirements. However, as

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<sup>45</sup> Supra, s. 28 (10)(a) and (b).

<sup>46</sup> Supra, s. 28(11).

noted in the preceding paragraph, this may change.

#### *Owner/Operator Liability*

Who is liable for financial assurance depends, ultimately, on how the definition of "person responsible" in the *Environmental Protection and Enhancement Act*<sup>47</sup> may be applied to the facts of any individual case. Potentially a person may be held responsible for the payment of financial assurance who is either an owner or an operator of a waste management site.

#### *Nature and Amount of Financial Assurance Held*

As noted, there are currently no securities being held by the Ministry of Environmental Protection. Several Regional Health Authorities currently hold four securities, all in the form of an irrevocable letter of credit. As applications are processed, security will be paid in the forms, and on the conditions, described above.

## **4.2 Recycling**

Ministry Responsible: Department of Environmental Protection

Applicable Legislation: *Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3, ss. 161-168. (s. 167(1) Security). See also: *Beverage Container Recycling Regulation*, Alta Reg. 128/93, as amended; *Tire Recycling and Management Regulation*, Alta. Reg. 249/92, as amended.

### **4.2(a) Legislative Requirements**

Section 167 in Part 9 of the *Environmental Protection and Enhancement Act*, Waste Minimization and Recycling provides that, if required by the regulations, a manufacturer or distributor of a designated material for sale in Alberta and a retailer shall provide financial or other security and carry insurance in respect of its operations in Alberta related to the manufacture, distribution or sale of the designated material.

The security provisions described above also apply to hazardous recyclable materials. Section 180(1) of the Act provides that, if required by the regulations, a "holder of a personal identification number" shall provide financial assurance.

The *Beverage Container Recycling Regulation* does not require any form of financial assurance.

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<sup>47</sup> EPA, s. 1(ss).

The *Tire Recycling and Management Regulation* provides under s. 8 that the Tire Recycling Management Board *may* require an applicant to provide security or evidence of security to the Board in a form and amount acceptable to the Board for purposes of ensuring the applicant exercises his powers and carries out his duties as a registrant. These provisions are similar to financial assurance provisions as part of recycling initiatives in Manitoba, Nova Scotia and New Brunswick. The assurance does not directly attach to environmental liability, but, rather, acts as security for all of the obligations of the applicant in the recycling process in the province.

#### 4.2(b) Ministry Response to Questions

It was not possible, in the time allowed to prepare this report, to obtain information from the department responsible for Part 9 of the Act.

#### 4.3 Aggregates

Ministry Responsible: Department of Environmental Protection

Applicable Legislation: *Environmental Protection and Enhancement Act*, S.A. 1992, c.E-13.3, ss. 119-132; and *Quarries Regulation Act*, R.S.A. 1980, c.Q-1 (no financial assurance requirements); and *Mines and Minerals Act*, R.S.A., 1980, c.M-15 (Ministry of Energy); and the *Public Lands Act*, R.S.A., 1995, c.P-30. See as well: *Conservation and Reclamation Regulation*, A.R.115/93, ss. 16-24; and *Conservation and Reclamation Amendment Regulation*, A.R. 167/96 ss. 11-12; *Surface Materials Regulation*, A.R. 11/78, as amended, s. 2(d), Sched. s.14(a); *Environmental Assessment Mandatory and Exempted Activities Regulation*, A.R. 111/93, Sched. 1(b).

#### 4.3(a) Legislative Requirements

There are two separate regimes that apply to aggregates, depending on whether they are on private or public land.

Private aggregate operations are subject to *The Environmental Protection and Enhancement Act*. Section 120 under Part V of the Act, Conservation and Reclamation, provides that, if required by the regulations, an operator<sup>48</sup> shall provide financial or other security and carry insurance in

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<sup>48</sup> "Operator" is defined as an approval holder, any person who carries on or has carried on an activity on or in respect of specified land other than pursuant to an approval, and a successor, assignee, executor, administrator, receiver, receiver-manager of a person described above, or a person who acts as principal or agent of a person in any preceding category. *Supra*, s. 119.

respect of the activity carried on by the operator on specified land. Subsection 120(2) provides that the above provisions do not apply to the Government or a government agency.

The opening up, operation or reclamation of a pit or quarry is identified under Division 3, Conservation and Reclamation, of the *Activities Designation Regulation*.<sup>49</sup> Section 16 of the *Conservation and Reclamation Regulation*<sup>50</sup> defines “approval” as an approval issued in respect of an activity that is listed in Division 3 of the Schedule to the *Activities Designation Regulation*. Section 17 of the *Conservation and Reclamation Regulation* provides that the Director shall require an operator to provide security before the approval is issued.<sup>51</sup> Section 18 provides for the amount of security required. Security shall be in an amount determined by the Director to be sufficient to ensure completion of conservation and reclamation on the specified land as required based on:

- the estimated costs of conservation and reclamation submitted by the operator;
- the nature, complexity and extent of the activity;
- the probable difficulty of conservation and reclamation, giving consideration to such factors as topography, soils, geology, hydrology and revegetation, and
- any other factors the Director considers to be relevant.<sup>52</sup>

The operator shall prepare and provide information in support of the estimated cost of conservation and reclamation,<sup>53</sup> and the Director may increase or decrease the amount of security.<sup>54</sup>

Security must be in one or more of the following forms:

- cash;
- cheques and other similar negotiable instruments payable to the Provincial Treasurer;
- Government guaranteed bonds, debentures, term deposits, certificates of deposit,

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<sup>49</sup> Alta. Reg. 110/93, Sch., Div. 3, (d).

<sup>50</sup> Alta. Reg. 115/93.

<sup>51</sup> Supra, s. 17(1)(a).

<sup>52</sup> Supra, s. 18(1)(a),(b),(c) and (d).

<sup>53</sup> Supra, s. 18(2).

<sup>54</sup> Supra, s. 20.

- trust certificates or investment certificates assigned to the Provincial Treasurer;
- irrevocable letters of credit, irrevocable letters of guarantee, performance bonds or surety bonds in a form acceptable to the Director;
- any other form that is acceptable to the Director.<sup>55</sup>

Security may be returned in whole or part.<sup>56</sup> Security may be forfeited where an operator fails to comply with an environmental protection or an emergency environmental protection order, and the failure to comply may, in the Minister's opinion prevent or otherwise interfere with conservation and reclamation of the specified land.<sup>57</sup>

Where the Minister orders security to be forfeited, the Minister shall direct the Provincial Treasurer to transfer the security from the Environmental Protection Security Fund to the Environmental Protection and Enhancement Fund.<sup>58</sup> Where the amount of the forfeited security exceeds the amount required for conservation and reclamation, the Provincial Treasurer shall on the direction of the Minister pay the excess amount to the operator.<sup>59</sup> Where the amount of the forfeited security is insufficient to pay for the cost of conservation and reclamation, the operator remains liable for the balance.<sup>60</sup>

Quarry operations producing more than 45,000 tonnes per year are subject to an Environmental Impact Assessment, *per* the *Environmental Assessment Mandatory and Exempted Activities Regulation*<sup>61</sup> and are subject to payment of financial assurances.

Quarry operations on public lands are authorized under the *Public Lands Act*, and are subject to financial assurances under the *Surface Materials Regulation*.<sup>62</sup> Section 3 provides that

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<sup>55</sup> *Supra*, s. 21(a),(b),(c),(d), and (e).

<sup>56</sup> *Supra*, s. 22.

<sup>57</sup> *Supra*, s. 24.

<sup>58</sup> *Supra*, s. 24(2)(a) and (b).

<sup>59</sup> *Supra*, s.24(5).

<sup>60</sup> *Supra*, s.24(6).

<sup>61</sup> *Environmental Assessment Mandatory and Exempted Activities Regulation*, A.R. 111/93, Sched. 1, (b).

<sup>62</sup> Alta. Reg. 11/78.



applications shall be accompanied by a security deposit in an amount prescribed by the Minister or Schedule. The Schedule to the regulation sets out at s.14(a) that security for all licences issued where operations remove surface material shall be an amount not less than \$250.00 per acre on the approved operating area. Note that there is some discrepancy between this figure and that provided by the Ministry.

#### **4.3(b) Ministry Response to Questions**

##### *Administrative and Enforcement Requirements*

Diane Fournier, Disposition Services Branch, Land and Forest Service, Land Administration Division, Ministry of Environmental Protection notes that sand and gravel operations are not approved and extraction cannot commence until the required security is received. On public lands, a security deposit of \$1,000 per acre of disturbance is required. However, higher rates may be assessed if warranted. Acceptable forms of security are:

- cash (the Department will not pay interest)
- negotiable bearer bonds of the Government of Canada or the Province of Alberta
- term deposits or certificates of deposit issued by a chartered bank, credit union or Alberta Treasury Branch
- irrevocable letter of credit or letter of guarantee
- promissory notes<sup>63</sup>

On private lands, sites are subject to the *Conservation and Reclamation Regulations* and financial assurances are payable on sites 5 ha or larger. Acceptable securities are as those identified above.

##### *Impending Changes to the Legislative and Regulatory Framework*

The Department is currently in the process of reviewing all financial assurance requirements under all of its legislation. A working group has been established to develop a "risk assessment" model to be used in determining the need for security. The Task Force found that there is a need for financial assurance, under specific circumstances, to protect the public purse. It also found that current systems meet the legislative objective, but different provisions among different laws result in inequitable treatment.

The Task Force recommended, among other things, that the Department of Environmental

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<sup>63</sup> These forms of security are described on the Ministry information sheet "Acceptable Forms of Security Deposits."

Protection:

- develop and implement a risk assessment process to determine security requirements for decommissioning and reclamation
- recognize the legitimacy of and encourage alternate industry-based funds where it works for a particular industry sector (such as the Orphan Well Fund)
- in certain low risk situations consider government compliance and enforcement processes as an alternative to security; and where such a system is in place, require security only when past performance is substandard
- give operators opportunity to provide a single security for multiple operations
- have the Land and Forest Service review the need for current security under the Public Lands Act with the same risk assessment model

*Applicability of Financial Assurance Requirements to Municipalities*

Under the *Conservation and Reclamation Regulation*, security for sand and gravel operations on private land is not required to be paid by municipal governments and other provincial government agencies. On public lands, a policy change was recently approved whereby security deposits are no longer required to be paid by municipal governments if the sand and gravel is required for public works purposes and not sold in competition with the private sector.

*Owner/Operator Liability*

On public lands, the leaseholder is liable for financial assurance. On privately-owned land, whoever holds the approval is responsible for all activities on the site, including financial assurance requirements.

*Nature and Amount of Financial Assurances Held*

The total assurances held for public and private lands is approximately \$6.2 million, in cash, securities and guarantees. See the chart at the end of this report for details.

## 5. Saskatchewan

### 5.1 Waste Management and Recycling

Ministry Responsible: Department of Environment and Resource Management

Applicable Legislation: *The Environmental Management and Protection Act*, S.S. 1983-84, c. E-10.2; am 1992 c. 49; 1995 c. 20, s 38(1).

#### 5.1(a) Legislative Requirements

The Act provides for various regulation-making powers, including the power to make regulations regarding financial assurances pertaining to hazardous substances (1992, c. 49, s. 7(1)(c)) and to product management programs (1995, c.20, s.2). To date, no such regulations have been made.

#### 5.1(b) Ministry Response to Questions

There are no financial assurance mechanisms of any kind currently held by the province for waste management, nor are there any plans in place to change this circumstance for the foreseeable future.

### 5.2 Aggregates

Ministry Responsible: Ministry of the Environment and Resource Management

Applicable Legislation: *Sand and Gravel Act*, R.S.S. c.S-5; *Mineral Resources Act*, S.S. 1984-85-86, c. M-16.1

#### 5.2(a) Legislative Requirements/Ministry Response to Questions

Aggregate extraction operations in Saskatchewan are subject to different legal requirements depending on whether they are on private or public lands.

According to Graham Mutch, Environmental Assessment Branch, Saskatchewan Environmental and Resource Management, no financial assurances are required, at least as pertain to the Saskatchewan *Sand and Gravel Act* R.S.S. c.S-5 or the *Mineral Resources Act*, S.S. 1984-85-86, c. M-16.1. He also notes: "There are no outstanding financial assurance requirements under the Environmental Assessment Act (Saskatchewan) with regard to sand and gravel, although the Minister, at his discretion, could require one, if such an operation were subject to an Environmental Impact Assessment." There are no such financial assurances on record.

For Crown land under lease, Doug Mazur, Director, Sustainable Land Management, indicates that a performance bond or another form of acceptable security is required to ensure reclamation of the land. The requirement is set out under department policy and, as a condition of the lease agreement, the lessee must provide proof that the bond has been obtained within 60 days of issuance of the lease. Failure to do so may result in the cancellation of the lease. The security shall not be discharged until site restoration and final surface rehabilitation is completed to the satisfaction of the inspecting Conservation Officer.

*Applicability of Financial Assurance Requirements to Municipalities*

The Ministry has entered into agreements with municipalities where they are required to provide the Ministry with a written guarantee that they will restore all sand and gravel lease properties to a condition acceptable to the department.

*Impending Changes to the Legislative and Regulatory Framework*

There are no changes planned for the foreseeable future.

*Owner/Operator Liability*

The lessee in the cases described above is always responsible for obtaining the financial assurance.

*Nature and Amount of Financial Assurance Held*

Complete information regarding the kinds of securities held is not available. The department currently holds approximately \$600,000 in bonds or securities. See the chart at the end of this report.

Glen McLeod of Manitoba Environment, Legislation and Intergovernmental Affairs, advises that, although there have been no regulations made under the *Environment Act* pertaining to financial assurance, Manitoba Environment has, on numerous occasions, made the requirement of satisfactory financial assurance an express term of a licence issued under the Act. The Ministry finds the authority to make these requirements under section 10(8), 11(11) and 12(7) of the Act. The ministry's position is that in certain cases evidence of satisfactory financial assurance is necessary for effective environmental management.

The Ministry has also, on several occasions, included a requirement for financial assurance in a License or Director's approval issued under the *Dangerous Goods Handling and Transportation Act*.

In virtually every case where Manitoba Environment has required financial assurance, it has been as a term or condition of a License or other form of approval. Evidence of satisfactory financial assurance is a prerequisite, therefore, to the setting into operation of the facility in each case. There have also been over the years a few cases involving contaminated site remediation orders where the Ministry has required financial assurance as a term of an order.

If the requirement of financial security is not met, enforcement action will be taken. As Manitoba Environment's enforcement policy places a higher priority on ensuring compliance than on punitive measures, first steps in a case of non-compliance would likely involve contacting the party and an effort to persuade the party to provide the required assurance. If the party persists in non-compliance, then enforcement measures such as suspension or revocation of a licence or approval, and/or quasi-criminal charges under the appropriate legislation would ensue.

The Ministry currently holds a number of different kinds of financial assurance mechanisms: letters of credit, letters of guarantee, performance bonds, cash, builders bonds and insurance policies. The determination of the type of financial assurance required in any particular case is usually negotiated with the party required to provide the assurance. Licences issued typically contain the clause: "...provide an irrevocable letter of credit, permit bond, performance bond, or other type of financial assurance, in a form satisfactory to the Director..." The affected party is encouraged to investigate his or her options and propose to the Ministry a preferred form of assurance.

The Ministry does not anticipate making any changes to the way financial assurance is presently administered. To date, the Ministry has not utilized an environmental trust fund, not because of any particular opposition to the notion of a fund, but rather that the topic has not been investigated as to how a trust might be of beneficial use to the province.

*Impending Changes to the Legislative and Regulatory Framework*

The *Contaminated Sites Remediation Act*, Bill 34, received Royal Assent on November 19, 1996. It is not yet proclaimed, but proclamation is expected sometime in early 1997. Section 17(2)(c)(iii) provides that the director may require a person or persons named in a remediation order to provide security in a form and manner acceptable to the director and subject to any conditions that the director considers advisable. Section 19(1)(b) provides that a certificate of compliance cannot be granted unless the necessary security has been provided.

Other than this new Act, the Ministry is not anticipating any legislative or regulatory changes which would affect the utilization of financial assurance vehicles. Mr. McLeod did note, however, that the Ministry does envision an ongoing increase in the frequency in which it requires financial assurance. In the early 1990's there were practically no instances of requirements for financial assurance as conditions of a license or approval. Over the past three years, however, the number of times these requirements have been imposed has grown from zero to twenty-five.

Mr. McLeod also notes that, although none are expressly planned at this time, all future acts and regulations developed by the department will likely be examined for the possibility of including financial assurance provisions.

#### *Applicability of Financial Assurance Requirements to Municipalities*

Ministry policy is that the legislative provisions which allow financial assurance requirements to be imposed on private-sector parties apply equally to public-sector parties, such as municipalities. In practice, however, the Ministry has required financial assurance from only one municipality, the Rural Municipality of Cartier.

#### *Owner/Operator Liability*

The Ministry's position on the question of owner/operator liability is that the responsibility for financial assurance would lie with the party named in the License, approval or order which imposes the financial assurance requirement.

#### *Nature and Amount of Financial Assurance Held*

The financial assurance programme in Manitoba has been operating for about three years. The total value of assurances held, including insurance policies, is in excess of sixty million dollars (\$63,045,397.93).

See the chart at the end of this report for a complete breakdown of type and amount of financial assurance.

### 6.3(a) Legislative Requirements

Section 200 of the Act provides for a quarry mineral rehabilitation levy. Each year, in accordance with the regulations, an operator of an aggregate quarry shall remit a rehabilitation levy. Where the aggregate quarry is owned by the Crown, the remittance shall be made no later than the 30th day following the anniversary date or expiry of the quarry mineral disposition. Where the quarry mineral is not owned by the Crown, the remittance shall be made no later than the 30th day after expiry of the registration certificate.<sup>74</sup> Section 200 does not apply to Manitoba Hydro.<sup>75</sup>

The Minister of Finance shall deposit amounts remitted as quarry rehabilitation levies in an account known as the "Quarry Rehabilitation Reserve Account."<sup>76</sup> The Minister may make an expenditure from the Quarry Rehabilitation Reserve Account of sums required for the rehabilitation of lands on which a quarry is situated, and may enter into agreements for and on behalf of the government for the purpose of quarry rehabilitation.<sup>77</sup>

The Schedules to the Quarry Minerals Regulations, 1992, Schedule C, Royalty Rates and Rehabilitation Levy states that "Every operator of an aggregate quarry shall remit to the recorder a rehabilitation levy equal to the product of the number of tonnes of aggregate quarry mineral produced multiplied by \$0.10."

### 6.3(b) Ministry Response to Questions

#### *Administrative and Enforcement Mechanisms*

The Quarry Rehabilitation Programme is administered and enforced by Manitoba Energy and Mines, Mines Branch (Engineering and Inspection Section).

If the rehabilitation levy for aggregate quarry minerals produced by the operator in the preceding year is not remitted to Manitoba in accordance with the Act, legal enforcement may proceed under Part 18 of the Act (Offences and Penalties).

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<sup>74</sup> *The Mines and Minerals and Consequential Amendments Act*, S.M. 1991, c.9, ss. 200(1)(a) and 200(1)(b).

<sup>75</sup> *Supra*, s.200(2).

<sup>76</sup> *Supra*, s.200(3).

<sup>77</sup> *Supra*, s.200(4).

## 7. Ontario

### 7.1 Waste Management and Recycling

Ministry Responsible: Ministry of Environment and Energy

Applicable Legislation: *Environmental Protection Act*, R.S.O., 1990, c.E-19, ss. 131-136; s.176.

#### 7.1(a) Legislative Requirements/Ministry Response

The Economic Services Branch of the Ontario Ministry of Environment and Energy has prepared a guide that provides a comprehensive description of financial assurances pertaining to waste management activities in the province of Ontario.<sup>78</sup> What follows is a brief summary of the guide, with particular attention paid to the questions asked by the Department of Finance. For more detailed information, the reader is referred to the guide.

Financial assurance is authorized under Part XII of the Environmental Protection Act for the activities listed below (as enumerated under Part V of the *Environmental Protection Act*, "Waste Management") and allows provincial officials to require, as a condition of an order or approval, the provision of financial security by regulated parties (persons or groups). The legal authority to require financial assurance as a condition in a control order or an approval is derived from section 131-134 of the EPA.

Section 131 identifies the various kinds of financial assurances permitted under the Act:

- cash;
- a letter of credit;
- negotiable securities issued or guaranteed by either the Government of Canada or the Government of Ontario;
- a personal bond accompanied by collateral security;
- a bond of a guarantee company approved under the Guarantee Companies Securities Act;
- a bond of a guarantor, other than a guarantee company, accompanied by collateral security;
- or an agreement either in the form and terms specified in the approval order or in the form and terms prescribed by the regulations.

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<sup>78</sup> Economic Services Branch, Ontario Ministry of Environment and Energy, "Financial Assurance -- Part XII, Ontario Environmental Protection Act," May, 1996 (Toronto: Queen's Printer for Ontario, 1996).



The Act also provides for financial assurance for compliance with an approval or order.<sup>79</sup> "Order" means an order by the Director and includes an order, notice, direction requirement or report made by a Director under the *Ontario Water Resources Act*.

Failure to provide financial assurance specified in an approval or in accordance with a stage specified in an approval is grounds for revocation of the approval and for an order in writing by the Director prohibiting or restricting the carrying on, operation or use of the works in respect of which the financial assurance is required.<sup>80</sup>

Upon receipt of a written request that all or part of a financial assurance be returned or released, the Director may make an order to the extent requested if satisfied that the financial assurance is not required in respect of the works for which the financial assurance was originally ordered.<sup>81</sup>

The Director may make an order to require the performance of environmental measures for which the Crown holds financial assurance if the Director has reasonable and probable grounds to believe that any environmental measure required by the approval or order in respect of which the financial assurance was given has not been or will not be carried out in accordance with the requirement.<sup>82</sup> This order shall be directed to the person to whom the approval or order for financial assurance was issued or directed and to any person that to the knowledge of the Director has provided the financial assurance for or on behalf of the person to whom the approval or order was issued, or shall be directed to the successor or assignee of that person. Upon the issuance of an order by the Director, the Crown may use any cash, realize any bond or other form of security and use the money and enforce any agreement provided or obtained as the financial assurance for the performance of the environmental measures and may carry out the environmental measures.

Activities for which financial assurance is *required in every case*:

- Approvals under Part V, EPA
  - private landfill sites for which a hearing is required under Section 30 of the EPA, or which will accept non-hazardous solid industrial, commercial

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<sup>79</sup> *Environmental Protection Act*, R.S.O. 1990, c.E.19, s 132.

<sup>80</sup> *Supra*, s. 133.

<sup>81</sup> *Supra*, s. 134.

<sup>82</sup> *Supra*, s. 136.

assurance should be required:

- Where a required action, process or task could result in adverse effects or damages to property owners, the public, or individuals who are not employees and for which financial compensation may be required.
- When appropriate regional or approvals staff determine that a facility or operation will require decommissioning, rehabilitation or environmental cleanup measures when it is to be shut down or modified in the future.
- When the long term and/or perpetual management or monitoring of an existing or potential pollution or contamination problem is required by an order or approval.
- When there is reason to expect that the regulated party might become insolvent in the future and be unable to complete or comply with the conditions of an order or an approval.
- When a regulated party or person has been convicted of violations involving pollution discharges or emission for the specific or related problems that are being addressed in an order or approval.
- When the regulated party receives an extension to a compliance date.
- When the operation or waste residuals of the regulated party are judged to be high risk in that the release of a contaminant could cause serious health, environmental or property damage including interference with the operation of private and municipal wells.

The guide also details how the value of the financial assurance required should be calculated, and how the various financial assurance instruments should be administered.<sup>85</sup>

The policy also notes that financial assurance will not normally be required of municipalities and other public bodies or institutions, as they are not subject to bankruptcy and financial insolvency to the same degree as are private companies. They have a permanence of place that prevents them from "walking away" from local problems, and public institutions are generally backed by provincial or federal government resources.<sup>86</sup>

#### *Impending Changes to the Legislative and Regulatory Framework*

Andrzej Dominski, P. Eng., Supervisor, Waste Unit, Ministry of Environment and Energy noted that regulatory reform is underway in Ontario. New landfill standards will affect the requirement for financial assurance for landfill; other reforms may affect the types of facilities requiring

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<sup>85</sup> "Financial Assurance," op. cit., at pp 14-25.

<sup>86</sup> Ibid, at 9.

financial assurance, and the amount of assurance they will be required to post. It is too early, however, to know what is planned.

## 7.2 Aggregates

Ministry Responsible: Ministry of Natural Resources

Applicable Legislation: *Aggregate Resources Act*, R.S.O. 1990, c.A.8, ss. 48-56. See also: O.Reg. 15. See also: Bill 52, *Aggregate and Petroleum Resources Statute Law Amendment Act, 1996* (3rd Reading, December 19, 1996; proclamation anticipated in spring 1997).

### 7.2(a) Legislative Requirements: Financial Assurance Under the Aggregate Resources Act, R.S.O. 1990

The *Aggregate Resources Act* (ARA) provides that, along with undertaking progressive and final rehabilitation of a site, every licensee under the Act shall pay to the Treasurer security for the rehabilitation of the site at the prescribed time and in the prescribed amount and manner.<sup>87</sup>

Ontario Regulation 15 prescribes that the rehabilitation security a licensee must pay is 8 cents for every tonne of aggregate removed from the site, to a maximum of the amount equal to \$6000 multiplied by the hectares in the site that require rehabilitation.<sup>88</sup>

The Act also provides that every person who applies for a permit must, before the permit is issued, pay to the Treasurer security for the rehabilitation of the site in the prescribed amount and manner.<sup>89</sup> The regulation provides that the rehabilitation security is 8 cents for every tonne which the permit authorizes to be removed.<sup>90</sup>

Rehabilitation securities shall be in the form of cash, cheque or money order.<sup>91</sup> Sums paid by a licensee or permittee under Sections 50 or 51 of the Act shall be held in an account in that

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<sup>87</sup> *Aggregate Resources Act*, R.S.O. 1990, c.A.8, ss. 48-50.

<sup>88</sup> O. Reg. 15, s. 8(2).

<sup>89</sup> ARA, op. cit., s. 51.

<sup>90</sup> O. Reg. 15, s. 11(1). Aggregate permits in Ontario are divided into two classes. A Class A permit is required for operations that extract more than 20,000 tonnes of aggregate annually. A Class B permit is required for operations that extract less than 20,000 tonnes of aggregate annually.

<sup>91</sup> *Supra*, s. 11(2).

person's name and shall be paid out in accordance with the regulations.<sup>92</sup> The amounts in the account may earn interest, and the interest is deemed to be part of the security.<sup>93</sup>

The Act also provides for partial refunds of securities upon the Minister being satisfied with the proof submitted by the licensee that progressive rehabilitation has been accomplished on the site in accordance with the site plan, the conditions of the license, the Act and the regulations. Total refunds are available upon submission of satisfactory proof to the Minister that final rehabilitation has been completed.<sup>94</sup>

Where a licensee fails to rehabilitate a site, the Minister may perform such rehabilitation as the Minister considers necessary. The cost of rehabilitation is a debt due to the Crown by the former licensee and shall be paid by the Treasurer out of the former licensee's rehabilitation security account.<sup>95</sup> Any sum remaining in the account after rehabilitation has been completed shall be paid by the Treasurer to the former licensee. If the cost of rehabilitation exceeds the security available in the former licensee's account, the deficiency is a debt due to the Crown by the former licensee and is recoverable by the Crown in any court of competent jurisdiction.<sup>96</sup>

**7.2(b) Financial Assurance Under Bill 52, Aggregate and Petroleum Resources Statute Law Amendment Act, 1996**

Section 4 of Bill 52 provides for amendments to the ARA to create a Aggregate Resources Trust.<sup>97</sup> The Trust shall provide for:

- the rehabilitation of land for which a license or permit has been revoked and for which final rehabilitation has not been completed
- the rehabilitation of abandoned pits and quarries, including surveys and studies respecting their location and condition
- research on aggregate resource management, including rehabilitation

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<sup>92</sup> ARA, op. cit. s. 52.

<sup>93</sup> Supra, ss. 52(2) and 52(3).

<sup>94</sup> Supra, ss. 53 and 54.

<sup>95</sup> Supra, s. 56.

<sup>96</sup> Supra, ss. 56(3) and 56(4).

<sup>97</sup> *Bill 52, Aggregate and Petroleum Resources Statute Law Amendment Act, 1996*, s.6.1(1).

- payments to the Crown in right of Ontario and to regional municipalities in accordance with the regulations.<sup>98</sup>

The Bill provides that the Minister may appoint a person who is not employed by the Crown as trustee of the Trust.<sup>99</sup> Money received or held by the Trust does not form part of the Consolidated Revenue Fund.<sup>100</sup> The trustee under Bill 52 may spend money from the Trust on rehabilitation of pit and quarry sites, and any amount spent by the Trust on the rehabilitation of land is a debt due to the Trust by the most recent licensee.<sup>101</sup>

The Bill also provides that, on the day of the amending legislation coming into force, all funds currently held under s. 52 of the ARA will be transferred to the Trust.<sup>102</sup> The amendments further provide that on or before the first anniversary of the amendments coming into force, the Trust shall refund to the person in whose name the account was held such amount as the Minister may direct.<sup>103</sup>

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<sup>98</sup> Supra, s. 6.1(2) paras. 1,2,3 and 4. About the Trust, the Canadian Environmental Law Association (CELA) has made the following comments: "CELA is also concerned about the overbroad range of activities that could be funded through the trust. CELA submits that Trust fund expenditures should be expressly limited to environmental protection, resource conservation or rehabilitation purposes...[T]he section 6.1(2) reference to "research" (para.3) is too vague and could conceivably include market research and development, as opposed to research into rehabilitation techniques or technology. Similarly, the section 6.1(2) reference to "payments" to Crown agencies or municipalities (para.4) does not appear to be specifically linked to environmental restoration or protection activities, and could conceivably be used to authorize payments to agencies or municipalities for non-environmental purposes. The absence of any regulations governing such payments compounds CELA's concerns about this matter." See Submission by The Canadian Environmental Law Association to the Standing Committee on General Government Regarding Bill 52 (Aggregate and Petroleum Resources Statute Law Amendment Act, 1996) (Toronto: Canadian Environmental Law Association, September 1996) at 4-5.

<sup>99</sup> Supra, s.6.1(3).

<sup>100</sup> Supra, s.6.1(4).

<sup>101</sup> Supra, ss.6.1(5) and 6.1(6).

<sup>102</sup> Supra, s.6.1(10).

<sup>103</sup> Supra, s.6.1(11).

The Bill repeals sections 50 to 54 of the ARA, and subsection 55(2). Sections 50 to 54 are replaced with the single provision that licensees and permittees shall make rehabilitation security payments in the prescribed amounts and within the prescribed times, and that rehabilitation payments shall be paid to the Aggregate Resources Trust.<sup>104</sup>

There are no draft regulations submitted with Bill 52.

## 7.2© Ministry Response to Questions

### *Administrative and Enforcement Requirements*

Ray Pichette, Non-Renewable Resources Section, Lands and Natural Heritage Branch, Ministry of Natural Resources confirmed the requirements described above. He made further comments regarding Bill 52. He noted that Bill 52 redesigns the requirement for financial assurance under that Act. The objectives behind requiring security have not changed. However, rather than having 4800 separate accounts (interest bearing) that hold financial assurance for each operation (monies are actually owned by the operators, not the Crown), the new system introduces a pooled trust fund.

### *Impending Changes to Legislative and Regulatory Framework*

See discussion of Bill 52, above.

### *Applicability of Financial Assurance Requirements to Municipalities*

Where a municipality is a licensee or permittee financial assurance requirements do apply.

### *Owner/Operator Liability*

Under the current and future system, it is the licensee or the permittee of record who is responsible for financial assurance. Landowners who have leased lands to a licensed aggregate operation are not responsible for the financial assurance.

### *Nature and Amount of Financial Assurance Held*

Approximately \$60,000,000 is held as a liability to the Consolidated Revenue Fund credited to 4800 separate accounts, one for each licence/permit. The security is held in cash. Over the past five years, there has been approximately \$5 million in security paid annually, and approximately

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<sup>104</sup> Supra, s.50(1).

## 8. Quebec

### 8.1 Waste Management and Recycling

Ministry Responsible: Ministry of the Environment and Wildlife

Applicable Legislation: *Environment Quality Act*, R.S.Q. c.Q-2., ss. 22-23; s.31(n) -- (note: ss.(n.1) to (n.4) not yet in force); s.55.

#### 8.1(a) Legislative Requirements

The *Environment Quality Act*, Division VII, prohibits anyone from establishing or altering a waste management system or part of it without first obtaining a certificate from the Minister attesting that the project complies with the standards provided for in the regulations.<sup>105</sup> No person in Quebec may operate a waste management system or a part of it without obtaining from the Minister a permit for that purpose; and, in order to obtain the permit, the applicant must post the guarantees determined by regulation.<sup>106</sup>

The Act gives the government the authority to make regulations that require, as a condition prior to the issuance or renewal of a certificate of authorization, that a person furnish security. The amount of security may vary depending on the class, nature, extent or cost of the project for which the security is required.<sup>107</sup> As well, in the case of an application for authorization for an activity that is likely to harm or destroy the surface of the soil, the applicant must submit a land reclamation plan as well as any guarantee exigible, the whole in accordance with the standards, terms and conditions prescribed by regulation.<sup>108</sup>

Amendments not yet in force also provide that regulations may be made that require, as a condition for the operation of a facility the setting up of financial guarantees. Specifically, section 31(n.1) provides for security to apply at the time a facility is closed or thereafter.

The requirements pertaining to the provision of financial assurance for various categories of solid waste disposal or storage sites and hazardous waste transfer stations and transportation activities are defined in the *Solid Waste Regulations* (articles 17 to 21) and the *Hazardous Waste*

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<sup>105</sup> *Environment Quality Act*, R.S.Q., c.Q-2., s. 54.

<sup>106</sup> *Supra*, s. 55.

<sup>107</sup> *Supra*, s.31 (n).

<sup>108</sup> *Supra*, s.23.

*Regulations* (articles 28, 39-41, 56, 63-65).

Article 17 of the *Solid Waste Regulations* provides that all applications for new permits or for the renewal of an existing permit must include a guarantee:

- \$25,000 for sanitary landfill to serve less than 20,000 people
- \$50,000 for sanitary landfill to serve 20,000 to 80,000 people
- \$100,000 for sanitary landfill to serve more than 80,000 people
- 5% of building costs for incinerators, pyrolysis plants, compost plants, transfer stations or recovery systems
- \$25,000 for dry materials disposal sites

Acceptable forms of the guarantee required by Article 17 are as those listed below for the *Hazardous Waste Regulation*.

Section 28 of the *Hazardous Waste Regulation* provides that every application for an operating permit for a hazardous waste transfer centre shall include a deposit of \$100,000 in one of the following forms:

- a certified cheque made to the order of the Minister of Finance
- bearer bonds issued by the government Quebec, the government of Canada or a municipality
- bonds guaranteed by the Government of Quebec or the Government of Canada
- a guarantee, guaranty policy or irrevocable letter of credit, joint and several, with waiver of the benefits of discussion and of division, valid of the term of the permit and issued by a banking institution, a savings and credit union or an insurer.

Section 56 requires a security of \$50,000, paid in one of the forms listed above, for a permit to transport hazardous waste. Section 57 provides that the applicant must also have public liability insurance for \$1 million. Section 21 provides that the above provisions also apply to any person storing hazardous waste generated by others before treating or disposing of it.

### **8.1(b) Ministry Response to Questions**

#### *Administrative and Enforcement Requirements*

Pierre Fournier, Economist, Service de l'economie de l'environnement, Direction de la promotion du developpement durable, Ministere de l'Environnement notes, in addition to the above that the



*Act Respecting the Establishment and Enlargement of Certain Waste Elimination Sites.*<sup>109</sup> adopted in June 1993, subjects all municipal solid waste and construction and demolition disposal sites (new site, or extensions to existing sites) to the environmental assessment process. For these projects, the government can require various provisions as part of an operation's authorization. The conditions are generally consistent with the provisions proposed for new regulations under review (see below). Since September, 1995, financial assurance to secure the cost of environmental protection requirements for a period of thirty years from date of closure of a site have been compulsory, and have been applied to seven projects. Six of these seven projects have established environmental restoration trust funds. The other project has put up a letter of credit.

Pierre Fournier notes that no money has yet been deposited in the post-closure environmental trust funds that were established over the past year. For the affected disposal sites, periodic deposits, based on the volume of waste disposed, shall commence with the operation of the authorized disposal areas. The amount, which will range between \$0.27/m<sup>3</sup> and \$1.31/m<sup>2</sup>, is calculated on the basis of the anticipated real costs of the post-closure programme.

*Impending Changes to the Legislative and Regulatory Framework*

Mr. Fournier reports that the existing regulations on solid and hazardous waste are currently under review, and that various changes to the financial assurance provisions are proposed.

In particular, it has been proposed to increase substantially the amounts of the financial assurance required (for example, in the solid waste regulation, the amount required ranges between \$25,000 and \$100,000. The range could be increased to between \$100,000 and \$1,000,000). It has also been proposed that financial assurance requirements should be extended to other parties and categories of activity. For solid waste regulation, the requirement would apply to municipally owned sites as well as privately-owned sites, and be extended to industrial and special waste disposal sites. For hazardous waste, the regulation may include disposal operations as well as storage and transportation.

A new regulation is also under development, the "Projet de reglement sur les fond de gestion environnementale postfermeture des depots definitifs." The proposed regulation will require operators of all waste disposal sites (municipal and industrial waste, construction and demolition waste, hazardous waste, and so on) to establish an environmental trust fund to secure environmental protection. The regulation will specify the obligations of the operators, the trustees and beneficiaries of the fund as well as the various modalities of the trust agreement.

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<sup>109</sup> S.Q., 1994, c.E-13.1.

The Department is actively promoting the use of environmental trusts for financial assurance against environmental liability. In fact, it has been proposed that such trusts will be the only vehicle accepted for the purpose. When the regulation comes into force, more than 200 trust funds may be needed if all active disposal sites remain in operation.

*Applicability of Financial Assurance Requirements to Municipalities*

Under the current regulations, financial assurance is not required from municipalities that own or operate waste management sites. As noted above, it has been proposed that financial assurance provisions should apply to municipalities.

*Owner/Operator Liability*

Under the current and proposed regulations, the responsibility for providing financial assurance lies with the operator of the site.

*Nature and Amount of Financial Assurances Held*

For hazardous waste management activities, the Ministry presently holds:

Transportation

Total Number of permits: 203

Total dollar amounts of financial assurance by type (number of permits)

surety bonds:	\$5,400,000 (108)
letters of credit:	\$4,200,000 (84)
government bonds:	\$450,000 (9)
cash:	\$100,000 (2)

Transfer Stations

Total Number of Permits: 17

Total dollar amounts of financial assurance by type (number of permits):

surety bonds:	\$1,000,000 (10)
letters of credit:	\$600,000 (6)
government bonds:	\$100,000 (1)

For solid waste management activities:

Municipal Waste Disposal Facilities

Total number of permits: 29

Total dollar amounts of financial assurance by type (number of permits):

surety bonds	\$1,250,000 (25)
letters of credit:	\$1,075,000 (3)

Construction and Demolition Waste Facilities

Total number of permits: 62

Total dollar amounts of financial assurance by type (number of permits):

surety bonds:	\$1,525,000 (55)
letters of credit:	\$125,000 (5)

See chart at the end of this report.

**8.2 Aggregates**

Ministry Responsible: Ministry of the Environment and Wildlife

Applicable Legislation: *Mining Act*, R.S.Q. c.M-13.1, ss. 232.1 - 232.12 (in force as of March 9, 1996); *Environment Quality Act*, R.S.Q. c.Q-2. See also: Draft Regulation under *Environment Quality Act, Pits and Quarries*. (Gaz. Pt II. Vol. 128, No. 5, 31/1/96, p. 1023).

**8.2(a) Legislative Requirements**

Recent amendments to the *Mining Act* provide for financial assurance in the mining industry, including aggregate extraction operations. However, according to the Ministry of Natural Resources, financial assurance for aggregate extraction is not administered under the Act.

The Regulation respecting Pits and Quarries under the *Environment Quality Act* requires that any person who applies for a certificate of authorization for a pit must provide a guarantee of \$5000 (where extraction will cover an area less than or equal to one hectare), or of \$4000 per hectare (or fraction thereof) if extraction will cover an area greater than one hectare. Acceptable forms of security are:

- cash or a certified cheque made out to the Minister of Finance;

above.

*Impending Changes to the Legislative and Regulatory Framework*

There are no changes planned.

*Applicability of Financial Assurance Provisions to Municipalities*

The regulatory provisions regarding financial assurance for aggregate extraction operations (pits) apply to municipalities in Quebec.

*Owner/Operator Liability*

Where there is one operator on the site, the holder of the permit, whether it is the owner or the operator, is responsible for the payment of financial assurance. Where there are multiple operators on the site, the owner of the site must hold the permit, and is liable for the payment of financial assurance.

*Nature and Amount of Financial Assurance Held*

The Ministry reports that it currently holds \$50,000 in insurance policies, \$187,250.00 in certified cheques, and \$75,000 in bonds.

## 9. New Brunswick

### 9.1 Waste Management

Ministry Responsible: Department of the Environment

Applicable Legislation: *Clean Environment Act*, R.S.N.B. 1973, c.C-6. See also: N.B. Reg. 96-82 -- the *New Brunswick Tire Stewardship Regulation - Clean Environment Act; Environmental Impact Assessment Regulation*, ss. 6(6) and 16(2).

#### 9.1(a) Legislative Requirements

The *Clean Environment Act* does not provide expressly for financial assurance. Regulation-making powers under s.32(q.2) permit regulations generally respecting insurance coverage or the posting of security as a condition of obtaining, continuing to hold, having renewed, having reinstated or transferring a registration, licence, permit or approval, including the forfeiture of the security and the disposition of the proceeds of insurance or security.<sup>111</sup>

N.B. Reg. 96-82, a regulation under the *Clean Environment Act*, provides for financial assurances from persons applying for the issuance, amendment or renewal of a [tire] supplier registration, or who hold a supplier registration, or who seek reinstatement of a suspended supplier registration.<sup>112</sup>

The regulation creates the New Brunswick Tire Stewardship Board, and establishes the power of the Board to notify a person required to provide security in writing and to specify the form and amount of the security, the nature of the proof of the security, the time within which the security is to be provided, the time period during which it is to be maintained and any other terms or conditions imposed by the Board in relation to it.<sup>113</sup> The amount of the security required of a supplier shall not exceed the amount of the fees that the Board reasonably estimates would be remitted by the supplier under section 22 during a period of two months, as averaged over a typical year.<sup>114</sup> Section 22 sets out the fees fixed by the Board. For tires with a rim size between 8.00 and 17.00 inches, fees shall not exceed three dollars per tire supplied by the supplier in New Brunswick. For tires with a rim size between 17 and 24.5 inches, the fee shall not exceed nine

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<sup>111</sup> Bill 72, An Act to Amend the Clean Environment Act, s. 3(a), in force 7 August, 1996.

<sup>112</sup> N.B. Reg 96-82, s. 20(1).

<sup>113</sup> *Supra*, s. 20(3).

<sup>114</sup> *Supra*, s. 20(2).

dollars per tire. For tires with a rim size exceeding 24.5 inches, fees may be established by the Board, and may vary according to size, usage or other classification.

The *Environmental Impact Assessment Regulation*, N.B. Reg 87/83, provides the Minister<sup>115</sup> and the Lieutenant-Governor in Council<sup>116</sup> with the capacity to impose terms and conditions on undertakings, including financial assurance. See below for a description of acceptable forms of security.

### **9.1(b) Ministry Responses to Questions**

#### *Administrative and Enforcement Requirements*

The New Brunswick Department of the Environment confirmed the regulatory requirements described above. It was also noted that the *New Brunswick Tire Stewardship Regulation* is a relatively new regulation and therefore no financial assurances have been required so far. The provision of the required assurance is a prerequisite to approval. If the security is not provided, the approval process could be delayed. Acceptable forms of security are cash, surety bond or an irrevocable letter of credit. Considerations taken into account when determining the amount and kind of security are whether the security is readily convertible, whether the applicant has a track record of responsible environmental management, and the simplicity of the administration of the financial assurance programme.

#### *Impending Changes to Legislative and Regulatory Framework*

There are no changes anticipated for the foreseeable future.

#### *Applicability of Financial Assurance Requirements to Municipalities*

Municipalities are not subject to financial assurance requirements.

#### *Owner/Operator Liability*

The party liable is the party to whomever the permit or approval was issued. It is the practice of the department to issue permits to the owners.

#### *Nature and Amount of Financial Assurances Held*

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<sup>115</sup> N.B. Reg. 87/83, s.6(6).

<sup>116</sup> Supra, s. 16(2).

Where a security is forfeited, the Minister, after deducting administration costs, may distribute in accordance with the regulations any money recovered.<sup>120</sup> Where the Minister makes a payment from money recovered from a security, the Minister is discharged of all responsibilities under the Act.<sup>121</sup>

Regulations under the *Beverage Containers Act* make detailed prescriptions regarding securities.<sup>122</sup> The regulation provides that if the distributor's empty beverage containers are collected by an agent and the agent delivers the security on behalf of the distributor under subsection 5(1) and (2), the security shall be two hundred thousand dollars.<sup>123</sup> If a distributor's empty beverage containers are not collected by an agent, then the security is calculated according to the volume of distribution. Fifteen thousand dollars is payable where the distributor distributes two hundred and fifty thousand or fewer beverage containers in a year.<sup>124</sup> Twenty five thousand dollars is payable if the distributor distributes more than two hundred and fifty thousand beverage containers in a year.<sup>125</sup>

Securities paid under the regulation shall be in the form of:

- a deposit of money
- a negotiable bond signed over to the Minister of Finance
- an irrevocable documentary credit or letter of credit from a bank or other lending institution acceptable to the Minister that is negotiable only by the Minister, or
- a bond of an insurance company authorized and licensed to do business in the

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<sup>120</sup> Supra, s. 17(9).

<sup>121</sup> Supra, s. 17(10).

<sup>122</sup> New Brunswick Regulation 92-54.

<sup>123</sup> Supra, s. 4(1)(a). Subsection 5(1) and (2) provide, respectively, that a natural person, partnership or corporation that is a distributor or a corporation that is an agent of distributors may deliver security; and that the security that is delivered by a corporation that is an agent of distributors shall be in the amount prescribed by the regulation, and the delivery of that amount shall fulfill the requirement for delivery of security for all distributors of which the corporation is an agent. In other words, subsections 5(1) and (2) provide for a "bulk rate" security in the case of an enterprise that acts as agent for a number of distributors.

<sup>124</sup> Supra, s. 4(1)(b)(I).

<sup>125</sup> Supra, s. 4(1)(b)(ii).

Province<sup>126</sup>

Security posted under the regulation is forfeited if the distributor or the agent fails to collect empty beverage containers or to pay the refunds or handling fees in accordance with the Act and regulations.<sup>127</sup> The full face value of a security delivered by a corporation acting as agent for distributor(s) is forfeit where a distributor (by not collecting empty containers or paying refunds) would be forfeited under the regulation.<sup>128</sup> The regulation also provides that a corporation that is an agent for distributors may offer a substitute security in an amount to be determined by the Minister that is sufficient to make the payments in full in relation to the forfeiture of the distributor.<sup>129</sup>

Money recovered on the forfeiture of a security, after administrative expenses, shall be distributed in the following order of priority:

- payment or reimbursement in full, or on a *pro rata* basis, to retailers who accept empty beverage containers and to owners or operators of redemption centres for paid-out refunds, handling fees and deposits on bulk material that relate to outstanding obligations for payment or reimbursement owing to these parties by the distributor in forfeiture;
- payment for the cost of transporting, recycling and otherwise handling the empty beverage containers after collection from the retailers or redemption centres; and
- payment of any balance remaining into the Environmental Trust Fund.<sup>130</sup>

### 9.2(b) Ministry Response to Questions

According to Mike O'Brien, there are two agents responsible for empty beverage container recycling in New Brunswick. One, NB Liquor, manages alcoholic beverage containers and is a Crown corporation. It is not subject to financial assurance requirements. The other, Encorp was set up by Coca-Cola Corp., Pepsi and the Soft Drink Manufacturer's Association for the purpose of acting as agent for beverage distributors.

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<sup>126</sup> Supra, s. 4(2)(a), (b), (c) and (d).

<sup>127</sup> Supra, s. 6(1).

<sup>128</sup> Supra, s. 6(2).

<sup>129</sup> Supra, s. 6(3).

<sup>130</sup> Supra, s. 6(4)(a), (b), and (c).



Encorp posted security in the amount of \$200,000 in the form of a performance bond.

### 9.3 Aggregates

Ministry Responsible: Department of Natural Resources and Energy

Applicable Legislation: *Quarriable Substances Act*, S.N.B. 1991, c.Q-1.1, s. 7(a)(I), 9(1)(b)(I), s.39(1)(d). See also: N.B. Reg. 93-92; N.B. Reg. 95-104

#### 9.3(a) Legislative Requirements

Section 7 of the *Quarriable Substances Act* provides that the Minister may grant a quarry lease authorizing a person to remove quarriable substances from Crown lands if, among other things, the applicant has submitted security, in accordance with the regulations for the protection, reclamation and rehabilitation of the Crown Lands during and on discontinuance of quarrying. Security is also required for a lease permitting the quarrying of peat.<sup>131</sup> Section 39 of the Act provides for regulation-making powers, including the power to make regulations respecting the security to be given under this Act and the procedures for the deposit, substitution, renewal and return of the security.

New Brunswick Regulation 93-29 (as amended by New Brunswick Regulation 95-104) provides that the security required by s.7 of the Act be in the amount of twenty dollars per hectare or five thousand dollars, whichever is the greater.<sup>132</sup> Amendments to the regulation provide that the security be in the form of:

- a deposit of money
- a negotiable bond signed over to the Province
- an irrevocable documentary credit or letter of credit from a bank or other lending institution acceptable to the Minister which is negotiable only by the Minister
- any other form acceptable to the Minister

The amendments also provide that a security in the form described in sub-paragraph (2)(c)(iii) (an irrevocable documentary credit or letter of credit) shall be for a term of not less than one year.<sup>133</sup>

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<sup>131</sup> *Quarriable Substances Act*, S.N.B. 1991, c.Q-1.1, s. 9.

<sup>132</sup> N.B. Reg. 93-92, s. 5(2)(a).

<sup>133</sup> N.B. Reg. 95-104, s.1, amending Section 5 by repealing paragraph (2)(c), substituting the sections describing acceptable forms of security, and setting the term for (2)(c)(iii) securities.

Similar amendments are made in the same regulation for securities paid by peat extraction operators.<sup>134</sup>

N.B. Reg. 93-92 also provides that the Minister may make a claim on the security provided by a lessee if the lessee fails to meet the obligation under the Act or lease with respect to the protection, reclamation and rehabilitation of the Crown Lands during and after discontinuance of quarrying.<sup>135</sup> Where a claim is made by the Minister in a security during the term of a lease, the lessee shall supplement the security in the form of a certified cheque to the amount originally provided to the Minister within one month after the claim is made.<sup>136</sup> Where a lessee surrenders the lease area in a condition satisfactory to the Minister, the security paid to the Minister, or the balance if a claim has been made, shall be returned, exclusive of interest, to the holder of the lease.<sup>137</sup>

### 9.3(b) Ministry Response to Questions

#### *Administrative and Enforcement Requirements*

The Honourable Albert Doucet, Minister of State for Mines and Energy, confirmed the legislative requirements as described above and also noted that the *Quarriable Substances Act* applies to Coastal Zone areas (300 metres above and 300 metres below the mean high water line) as well as Crown Land. He also notes that security is required only for Quarry leases and not for Quarry Permits. A Quarry lease gives the lease holder the sole right to extract from a specific aggregate resource, whereas a Quarry permit gives multiple users access to a specific aggregate resource. A Quarry lease will not be issued unless the necessary security is in place. If a security becomes null and void or is not renewed then the Minister has the right to cancel the Quarry Lease.

If an aggregate development will be discharging into the environment, during or after the period of operation, an approval is required under the Water Quality Regulation of the *Clean Environment Act*. As part of this approval the Minister of Environment may request a rehabilitation bond in a form and amount that the Minister approves. No rehabilitation security has ever been requested for an operating quarry in New Brunswick by the Department of

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<sup>134</sup> Supra, s. 3, amending Section 11 by repealing paragraph (2)(c), substituting the sections describing acceptable forms of security, and setting the term for (2)(c)(iii) securities.

<sup>135</sup> N.B. Reg. 93-92, s. 21.

<sup>136</sup> Supra, s. 22.

<sup>137</sup> Supra, s. 23.

Environment.

*Impending Changes to Legislation and Regulatory Framework*

There are currently no proposed changes to environmental legislation which would affect the utilization of financial assurance mechanisms.

*Applicability of Financial Assurance Requirements to Municipalities*

To the best of the knowledge of Ministry staff, no municipality has made an application to operate an aggregate pit on Crown lands. However, were this to arise, the provisions for financial assurance would apply to the municipality.

*Owner/Operator Liability*

For all aggregate extraction operations subject to the *Quarriable Substances Act*, the Crown is the owner of the land, and it is the responsibility of the Quarry lease holder to provide the financial assurance.

*Nature and Amount of Financial Assurance Held*

The province currently holds six reclamation securities, each in the amount of \$5,000, each in the form of a guaranteed letter of credit. See chart at the end of this report.

that may have accrued on the security.<sup>148</sup> The regulation also provides for return of security in the event that the site is sold or otherwise transferred and the transferee has been granted approval and provided security.<sup>149</sup>

Where a person fails to comply with an approved abandonment plan, a rehabilitation plan or an order from the Minister regarding the rehabilitation of the site and the failure to comply may prevent or interfere with the rehabilitation of the site, or where the security required by the Minister is not renewed and rehabilitation is not complete, the Minister may order that all or part of the security be forfeited.<sup>150</sup>

The Minister may spend as much of the security as is reasonably necessary to carry out the rehabilitation of the site.<sup>151</sup> If the amount of forfeited security exceeds the amount required for rehabilitation, the Minister shall pay the excess amount to the approval holder.<sup>152</sup> If the amount of the forfeited security is insufficient to pay for the cost of rehabilitation, the approval holder remains liable for the balance of the cost.<sup>153</sup>

### **10.1(b) Ministry Response to Questions**

#### *Administrative and Enforcement Requirements*

The legislative provisions related above notwithstanding, according to Barry Friesen, P. Eng., Solid Waste Co-ordinator, Solid Waste-Resource Implementation Committee, Department of the Environment, financial assurance requirements for waste resource management facilities are made on a case-by-case basis with no set formula or criteria attached at the present time.

#### *Impending Changes to the Legislative and Regulatory Framework*

There are no proposed changes to the legislation that would affect financial assurance vehicles.

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<sup>148</sup> Supra, s. 18(3). See above, discussion of s. 16 of the regulations.

<sup>149</sup> Supra, s. 18(5).

<sup>150</sup> Supra, s. 19(1).

<sup>151</sup> Supra, s. 19(3).

<sup>152</sup> Supra, s. 19(4).

<sup>153</sup> Supra, s. 19(5).

*Applicability of Financial Assurance Requirements to Municipalities*

Generally, financial security is not required for a waste-resource management facility where the owner is a municipality.

*Owner/Operator Liability*

Security requirements could apply to either party, or to both, depending on the circumstance.

*Nature and Amount of Financial Assurance Held*

According to Mr. Friesen, there is one waste management site -- a new one servicing the Halifax-Dartmouth region, where 40% of the province's population lives -- that has been required to provide financial assurance. It is a joint public/private undertaking, and commenced operations on January 2, 1997. The information as to the nature and quantity of the financial assurance is not available at this time.

**10.2 Aggregates**

Ministry Responsible: Department of the Environment

Applicable Legislation: *Environment Act*, S.N.S. 1994-95, c.1, s.57(1)(z), s. 66(1)(e). See also: N.S. Reg. 48/95 *Approvals Procedure Regulation*, s. 5; ss.13-19.

**10.2(a) Legislative Requirements**

In Nova Scotia, aggregate extraction operations are potentially subject to the financial assurance provisions under the *Environment Act*, and N.S. Reg. 48/95. Authority for making such operations subject to security provisions resides in N.S. Reg. 47/95, the Activities Designation Regulations. Aggregate extraction is not expressly identified in the regulation, but section 29 of N.S. Reg. 47/95 provides a "basket clause" for financial assurance requirements for any other activity or class of activity which the Minister believes on reasonable and probable grounds causes or will cause a significant adverse effect because of any one or more of:

- the size or magnitude of the proposed activity
- the sensitivity of the site where the proposed activity is to be located
- the proximity of the proposed activity to buildings or other structures
- the use of new technology in a proposed activity or
- the fair allocation of water resources or air resources will be affected by the

proposed activity.<sup>154</sup>

If an aggregate operation is designated as an activity subject to financial assurance, then the provisions, described above, of s. 57 of the Act, and N.S. Reg 48/95 apply.

### **10.3(b) Ministry Responses to Questions**

#### *Administrative and Enforcement Requirements*

Dan Hiltz, P.Eng., Manager, Environment Management Support Services, Resource Management and Environmental Protection, Department of the Environment confirmed the legislative requirements described above. He also noted that the department does not dictate the type of security to be provided, but, if the security is a performance or surety bond, the department needs to be satisfied with the mechanism for "calling in" the bond.

#### *Impending Changes to the Legislative and Regulatory Framework*

There are currently no plans to enact an environmental trust fund for aggregate operations. There is, however, a change proposed for the pit and quarry regulation whereby the security owed will be calculated according to a formula, rather than the current flat rate of \$2000/acre.

#### *Applicability of Financial Assurance Requirements to Municipalities*

To the best of the knowledge of Department staff, no municipality owns or operates an aggregate extraction site. However, were such a situation to arise, the financial assurance provisions would apply to the municipality.

#### *Owner/Operator Liability*

In Nova Scotia, if the operator is not the property owner but has sole control of the aggregate, then the operator applies for the approval and posts the security.

On the other hand, if the land owner allows more than one operator on the property, then the owner applies for the approval and posts the security.

The policy in Nova Scotia is that the Ministry will hold only one party responsible for the terms and conditions of an approval, including providing security.

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<sup>154</sup> N.S. Reg. 47/95, s. 29(1).

*Nature and Amount of Financial Assurance Held*

For aggregate operations (and for some surface mine operations for which a security could not be requested under the *Mineral Resources Act*), Nova Scotia presently holds approximately \$5.2 million in cash, cheques, bonds, debentures, term deposits, letters or lines of credit and sureties. See chart at the end of this report.

## 11. Prince Edward Island

### 11.1 Waste Management and Recycling

Ministry Responsible: Department of Fisheries and the Environment

Legislation: *Environmental Protection Act*, R.S.P.E.I., 1988, c.E-9.

#### 11.1(a) Legislative Requirements

There are no financial assurance provisions under the Act or any of its regulations.

### 11.2 Aggregates

Ministry Responsible: Department of Fisheries and the Environment

Applicable Legislation: *Environmental Protection Act*, R.S.P.E.I., 1988, c.E-9. See also: *Excavation Pits Regulation* No.EC753/90.

#### 11.2(a) Legislative Requirements

The *Excavation Pits Regulation* under the *Environmental Protection Act* requires that an application to operate any excavation pit must be accompanied by an undertaking to post a bond or other surety acceptable to the Minister in order to cover the costs of rehabilitation of the site.<sup>155</sup>

#### 11.2(b) Ministry Response to Questions

##### *Administrative and Enforcement Requirements*

According to Mr. George Gaudet of the PEI Department of Environmental Resources, the provisions under the *Excavation Pits Regulation* have never been enforced in the province.

##### *Impending Changes to the Legislative and Regulatory Framework*

According to Ron Estabrooks of the Department of Economic Development and Tourism, the Island has numerous unrehabilitated aggregate pits, and there are no plans or funds in place to rehabilitate them. The Island is "a big sand bar" and has never provided high-quality aggregate. In the past, aggregate from the other Atlantic provinces was transported to the Island by barge.

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<sup>155</sup> *Excavation Pits Regulation*, No. EC753/90, s. 3(j) and (k).



## 12. Newfoundland and Labrador

### 12.1 Waste Management and Recycling

Ministry Responsible: Department of Environment and Labour; Department of Government Services and Lands

Applicable Legislation: *Waste Material Disposal Act*, R.S.N. 1995, c.44, s. 11, s. 13, s. 21.

#### 12.1(a) Legislative Requirements

The *Waste Material Disposal Act* provides that no person may establish, alter, enlarge or extend a waste management system or a waste disposal site unless a certificate has been issued to the owner by the Minister.<sup>156</sup> A certificate shall not be issued to an owner, other than a council or a committee, unless the owner has deposited a sum of money, provided a surety bond or provided personal sureties, in the amount and upon the conditions that the Minister considers to be adequate.<sup>157</sup>

#### 12.1(b) Ministry Response to Questions

##### *Administrative and Enforcement Requirements*

According to Toby Matthews of the Environmental Management Division of the Department of Environment and Labour, the Minister has issued a Directive under the *Waste Material Disposal Act* that establishes, as a prerequisite to being issued a permit to operate a hazardous waste management site, the permittee must have environmental liability insurance in the amount of \$1 million, and must post a surety bond.

If the permittee is in alleged violation of any term of his or her Certificate of Approval, or any terms of the Act or the Regulations, the Ministry must prosecute the violation and, if the violation is proved, then the permittee must revoke the amount of the surety bond.

Amounts required to be posted as security vary, at the discretion of the Minister, but are for no more than \$20,000. The bonds are intended to deal with spills or leaks. In the event of a more serious incident leading to severe environmental damage, then, says Mr. Matthews, "we have a problem."

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<sup>156</sup> *Waste Material Disposal Act*, R.S.N. 1990, c.W-4, s. 11.

<sup>157</sup> *Supra*, s. 13(1).

*Impending Changes to Legislative and Regulatory Framework*

There are no planned, immediate changes to the legislative framework affecting financial assurance requirements, although Mr. Matthews did indicate that the province would be considering applying risk management criteria to financial assurance requirements at some time in the future.

*Applicability of Financial Assurance Requirements to Municipalities*

Municipalities are exempt from financial assurance requirements under the Act.

*Owner/Operator Liability*

Permits are issued to the owner of a site. The permittee is liable for financial assurance. Therefore owners are liable to meet any financial assurance obligations set by the Minister.

*Nature and Amount of Financial Assurance Held*

Complete information as to the amount of financial assurance held was not available. Security is held in letters of assurance (from Crown Corporations), cash deposits and surety bonds. Amounts of individual security ranges from five hundred to \$20,000.

**12.2 Aggregates**

Ministry Responsible: Department of Mines and Energy

Applicable Legislation: *Quarry Materials Act*, R.S.N., 1990, c.Q-1, s. 12.

**12.2(a) Legislative Requirements**

Section 12 of the *Quarry Materials Act* provides that the Lt.-Governor in Council may make regulations regarding securities for environmental restoration, but no such regulations have to date been made.

**12.2(b) Ministry Response to Questions**

*Administrative and Enforcement Requirements*

According to Kenneth Andrews, Director, Mineral Lands Division, Department of Mines and Energy, the department will occasionally require financial security for specific permit applications. In cases where this requirement is imposed, it is as a prerequisite to the issuance of

## APPENDIX A

### Research Methodology

Research was undertaken to locate and update all relevant legislation (including regulations and policies) pertaining to waste management, recycling and aggregate extraction in all jurisdictions. Ministry staff were also contacted, and sent a letter setting out specific questions pertaining to the interests of the Department of Finance.

Each letter provided a description of what our research told us was the relevant legislation, and then posed several questions about the legislative, regulatory and policy environment pertaining to financial assurances. For each jurisdiction, at least one letter was sent to the department responsible for waste management and recycling, and one to the department responsible for aggregates.

The sample that follows is an excerpt from the letter directed to the Alberta Ministry of Environment, Department of Action on Waste:

#### SAMPLE LETTER:

#### **Waste Management and Recycling**

1. According to our research, financial assurances for waste management and recycling are required under the relevant legislation, the Environmental Protection and Enhancement Act S.A. 1992 c.C-13.3. Section 28 of the Act establishes the Environmental Protection and Enhancement Fund and section 30 provides for the Environmental Protection Security Fund. Sections 119 to 132 pertain to conservation and reclamation. Sections 169-173 deal with waste. Relevant regulations under the Act are the Waste Control Regulation No. 192/96, the Approvals Procedure Regulation No. 113/93, the Conservation and Reclamation Regulation No. 115/93, the Conservation and Reclamation Amendment Regulation No. 167/96 and the Environmental Protection and Enhancement (miscellaneous) Regulation No. 118/93.

Please inform us whether or not the information above is complete and correct.

2. For the securities required under the Environmental Protection and Enhancement Act, and any others that exist but were not identified in question 1, please provide a description of:
  - applicable administrative and enforcement mechanisms (for example, are the mechanisms prerequisites to approval; what are the ramifications if requirements for financial securities are not met?)
  - the kinds of financial assurance mechanism used
  - the consideration which are taken into account by environmental

authorities in determining which type of financial assurance is required

3. Please describe any proposed changes to environmental legislation or regulations which could affect the utilization of financial assurance vehicles.
  - Please provide information on changes that relate to all financial assurance vehicles, with particular emphasis on environmental trust funds.
  - Please describe any proposed changes in the criteria used to determine the type and quantity of assurance required.
  - Please also indicate any changes in the process for acquiring financial assurances and determining the type and level of assurance required.
4. In the case where the owner/operator of a waste management site is a municipality, do the same requirements for financial assurance apply?
5. Where the owner and operator of a site are not the same party, to whom does the responsibility lie for the financial assurance?
6. Please provide information on the dollar amounts of financial assurances, by type of financial assurance vehicle.
  - Please indicate the total, cumulative amount held in each type of vehicle to date (eg. total value of all trusts held in cash, total value of letters of credit, etc.)
  - Please indicate the level of assurance, by type, provided on an annual basis. For example, how much cash is deposited in environmental trusts each year? (We understand that annual figures may fluctuate substantially. If this is the case, please provide approximate figures based on recent years' experience.)

## Appendix B

The names, phone numbers and fax numbers of the people contacted are:

### **New Brunswick**

Waste Management and Recycling

Joanne Glynn  
Department of the Environment  
P.O. Box 6000  
Fredricton, New Brunswick  
E3B 5H1  
FAX: 506-457-7805  
TEL: 506-457-4848

Aggregates

Honourable Albert Doucet  
Minister of State for Mines and Energy  
Department of Natural Resources  
P.O. Box 6000  
Fredricton, New Brunswick  
E3B 5H1  
FAX: 506-457-7204  
TEL: 506-453-3030

### **Prince Edward Island**

Waste Management and Recycling

Don Jardine  
Director  
Environmental Protection Division  
Department of Fisheries and the  
Environment  
P.O. Box 2000  
Charlottetown, PEI  
C1A 7N8  
FAX: 902-368-6488  
TEL: 902-368-5024

PEI (cont.)  
Aggregates

Virginia Bulger  
Energy Programme Manager  
Ministry of Energy and Mines  
P.O. Box 910  
Charlottetown, Prince Edward Island  
C1A 7L9

FAX: 902-368-6582  
(Ron Estabrooks TEL: 902-368-5010)

### **Newfoundland**

Waste Management and Recycling

Ken Dominee  
Director of Environmental Management  
4th Floor  
West Block  
Confederation Building  
St. John's, Newfoundland  
A1C 5T7  
FAX: 709-729-1930  
TEL: 709-729-5782

Aggregates

Ken Andrews  
Director of Mineral Lands Division  
Department of Mines and Energy  
P.O. Box 8700  
St. John's, Newfoundland  
A1B 4J6  
FAX: 709-729-6782  
TEL: 709-729-6425

## **Nova Scotia**

Waste Management and Recycling

Barry Friesen  
Solid Waste Coordinator  
Nova Scotia Department of the Environment  
P.O. Box 2107  
Halifax, Nova Scotia  
B3J 3B7  
FAX: 902-424-0569  
TEL: 902-424-2645

Aggregates

Dan Hiltz  
Manager of Environmental Management  
Support Services  
P.O. Box 2107  
Halifax, Nova Scotia  
B3J 3B7  
FAX: 902-424-0503  
TEL: 902-424-2284

## **Quebec**

Waste Management and Recycling

Jean Rivet  
TEL: 418-528-2363

Aggregates

Monsieur Jean Peltier  
Service de la Management et du la  
Protection des Rives et du Littoral  
2360 Chemin Sainte-Foy  
3e Etage  
Ste.-Foy, Quebec  
G1V 4H2

FAX: 418-644-2003  
TEL: 418-643-0648

## **Ontario**

Waste Management and Recycling

Andy Dominski  
Supervisor  
Industrial Approvals  
Ontario Ministry of Environment and  
Energy  
3rd Floor  
250 Davisville  
Toronto, Ontario  
FAX: 440-6973  
TEL: 440-3544

Aggregates

Ray Pichette  
Manager, Non-renewable Resources  
Ontario Ministry of Natural Resources  
P.O. Box 7000  
300 Water Street  
Peterborough, Ontario  
K9J 8M5  
FAX: 705-755-1206  
TEL: 705-755-1241

## **Alberta**

Waste Management and Recycling

Mr. Wayne Inkpen  
Regional Director  
Material Management  
Action on Waste Division  
Standard Life Centre  
10405 Jasper Avenue  
Edmonton, Alberta  
T5J 3N4  
FAX: 403-422-5120  
TEL: 403-427-5837

Alberta (cont.)  
Aggregates

Diane Fournier  
Lands Administration Division  
9915-108th Street  
Petroleum Plaza, South Tower  
3rd Floor  
Edmonton, Alberta  
T5K 2G8  
FAX: 403-422-4251  
TEL: 403-427-3570

## **Saskatchewan**

Waste Management and Recycling

Dale Bonke  
Waste Reduction Officer  
Environmental Protection Branch  
Room 240  
3211 Albert Street  
Regina, Saskatchewan  
S4S 5W6  
FAX: 306-787-5623  
TEL: 306-787-5810

Landfill

Greg Hallsworth  
Saskatchewan Environment and Resource  
Management  
Environmental Protection Branch  
Room 240-3211 Albert Street  
Regina, Saskatchewan  
S4S 5W6  
FAX: 306-787-5623  
TEL: 306-787-6487

Saskatchewan (cont.)  
Aggregates

Graham Mutch  
Environmental Assessment Branch  
Saskatchewan Environment and Resource  
Management  
3211 Albert Street  
Regina, Saskatchewan  
S4S 5W6  
FAX: 306-787-0930  
TEL: 306-787-6241

Doug Mazur  
Director  
Sustainable Land Management Branch  
3211 Albert Street  
Regina, Saskatchewan  
S4S 5W6  
FAX: 306-787-1349  
TEL: 306-787-2024

## **Manitoba**

Waste Management

Glen McLeod  
Senior Legislative Analyst  
Manitoba Environment  
Building #2  
139 Tuxedo Avenue  
Winnipeg, Manitoba  
R3N 0H6  
FAX: 204-489-9860  
TEL: 204-945-1607

Manitoba (cont.)  
Aggregates

Barry Hadfield  
Chief Mining Engineer  
Department of Energy and Mines  
Mines Branch  
Unit 360 -- 1395 Ellice Avenue  
Winnipeg, Manitoba  
R3J 3P2

FAX: 204-945-8427  
TEL: 204-945-6522

## **British Columbia**

Waste Management and Recycling

Ron Dreidger  
Director  
Pollution Prevention and Waste  
Management  
4th Floor  
777 Broughton Street  
Victoria, British Columbia  
V8V 1X5  
FAX: 250-356-9836  
TEL: 250-387-9977

Aggregate

John Errington  
Manager  
Reclamation and Permits  
Energy and Minerals Department  
P.O. Box 9323  
Station Provincial Government  
Victoria, British Columbia  
V8W 9N3  
FAX: 250-952-0481  
TEL: 250-952-0510

## **Northwest Territories**

Waste Management

Don Helfrick  
Hazardous Waste Specialist  
Environmental Protection Service  
Department of Natural Resources, Wildlife  
and Economic Development  
Government of Northwest Territory  
P.O. Box 21, Scotia Centre  
600, 5102-50th Avenue  
Yellowknife, Northwest Territories  
X1A 3S8  
FAX: 403-873-0221  
TEL: 403-873-7654

Recycling

Chris Wolnik  
Environmental Protection Service  
Department of Natural Resources, Wildlife  
and Economic Development  
Government of Northwest Territory  
P.O. Box 21, Scotia Centre  
600, 5102-50th Avenue  
Yellowknife, Northwest Territories  
X1A 3S8  
FAX: 403-873-0221  
TEL: 403-873-7654

Department of Indian Affairs and Northern  
Development

Annette McRoberts  
403-669-2671

## **Yukon Territory**

Government of the Yukon  
Recycling

Joe Ballantyne  
Director



Environmental Protection Branch  
Box 2703  
Whitehorse, Yukon  
Y1A 2C6  
FAX: 403-393-6205

Yukon (cont.)  
Waste Management

Bryan Levia  
Waste Management Coordinator  
Environmental Protection Branch  
Box 2703  
Whitehorse, Yukon  
Y1A 2C6  
FAX: 403-393-6205  
TEL: 403-667-3436

Aggregate

Bruce Fulcher  
Manager  
Geotechnical Services  
Transportation and Engineering Branch  
Department of Community and  
Transportation Services  
Box 2703  
Whitehorse, Yukon  
Y1A 2C6  
FAX: 403-393-6447  
TEL: 403-633-7942

Landfill

Jim Mayoh  
Director  
Engineering and Development  
Box 2703  
Whitehorse, Yukon  
Y1A 2C6  
FAX: 403-393-6216  
TEL: 403-667-5707

Department of Indian Affairs and Northern  
Development

Mark Zrum  
Head Land Use  
Land Resources  
345-300 Main Street  
Whitehorse, YT  
Y1A 2B5

**APPENDIX C: Financial Assurance by Type and Dollar Amounts  
by Province or Territory**

LC=Letter of Credit PB=Performance Bond GB=Government Bond C=Cash I=Insurance O=Other TD=Term Deposit

Province or Territory	Type	Aggregate	Waste Management	Recycling <sup>1</sup>
Yukon**	C	\$0	\$0	\$0
<b>Total</b>		<b>\$0.00<sup>2</sup></b>		
Northwest Territories**		still to come	\$0	\$0
<b>Total:</b>		<b>\$0.00<sup>3</sup></b>		
British Columbia	LC	\$1,152,625.00		
	C	\$69,500.00		
	O	\$2,525,870.00 <sup>4</sup>		
<b>Total</b>		<b>3747995</b>	<b>\$2,200,000.00<sup>5</sup></b>	
Alberta	LC	\$6,668,353.81	see note <sup>6</sup>	
	TD	\$594,529.22		
	C	\$3,119,996.22		
	GB	\$294,957.00		
	O	\$40920.80 <sup>7</sup>		
<b>Total</b>		<b>\$10,718,757.05</b>		
Saskatchewan	GB	\$600,000.00 <sup>8</sup>		
<b>Total</b>		<b>\$600,000.00</b>		
Manitoba	LC		\$6,450,000.00	
	PB		\$4,047,897.00	
	C	\$5,100,000.00	\$0	
	I		\$55,317,500.00 <sup>9</sup>	
	O		\$10,000.00 <sup>10</sup>	
<b>Total</b>		<b>\$5,100,000.00</b>	<b>\$65,825,397.00</b>	
Ontario				
	C	\$60,000,000.00		
<b>Total:</b>		<b>\$60,000,000.00</b>	<b>\$49,395,122.00<sup>11</sup></b>	

**APPENDIX C: Financial Assurance by Type and Dollar Amounts  
by Province or Territory**

LC=Letter of Credit PB=Performance Bond GB=Government Bond C=Cash I=Insurance O=Other TD=Term Deposit

Province or Territory	Type	Aggregate	Waste Management	Recycling <sup>1</sup>
<b>Quebec</b>	C	\$187,250.00	\$100,000	
	GB	\$75,000.00	\$550,000	
	PB		\$9,275,000	
	LC		\$6,000,000	
	I	\$50,000.00		
<b>Total</b>		<b>\$312,250.00</b>	<b>\$15,925,000</b>	
<b>New Brunswick</b>	LC	\$30,000.00	\$250,000.00	
	PB		\$7,700,000.00	\$200,000
	C		\$11,000.00	
<b>Total</b>		<b>\$30,000.00</b>	<b>7961000</b>	<b>\$200,000</b>
<b>Nova Scotia</b>	LC	\$3,577,400.00		
	PB	\$1,567,000.00		
	C	\$83,000.00		
	GB	\$25,000.00		
<b>Total</b>		<b>\$5,252,400.00</b>		
<b>Prince Edward Island</b>				
<b>Total</b>		<b>\$0.00</b>		
<b>Newfoundland</b>	PB	\$90,000.00		
<b>Total</b>		<b>\$90,000.00</b>		

\*\* As noted in the main body of the report, for the sake of clarity, responsibility for aggregate extraction operations and responsibility for waste management and recycling have somewhat arbitrarily been allocated, respectively, to the Department of Indian Affairs and Northern Development and the territorial governments.

## Notes

1. Financial assurance required under recycling legislation in four jurisdictions -- Alberta, Manitoba, New Brunswick and Nova Scotia -- are not required for environmental liability per se. Rather, the security is to ensure that obligations along the recycling process can be met. Aside from the fortuitous circumstances that led to getting the information regarding securities for recycling in New Brunswick, there was not the time or opportunity to obtain information from other jurisdictions about these kinds of securities.
2. The Yukon Department of Indian Affairs and Northern Development currently holds approximately \$100,000 in security for a number of minor land uses in the Territory. None, however, attach to an aggregate extraction operation (or waste management site, or recycling operation).
3. The Northwest Territories Department of Indian Affairs and Northern Development holds approximately 18 financial assurance instruments, with value varying between \$5,000 and \$20 million. Information was not available, however, on the individual amounts of security, or kind of security. Finally, it is not clear that any of these securities attach to any activity of relevance to this report.
4. Safekeeping Agreements.
5. Detailed information was not available for waste management financial assurance in British Columbia. The Ministry noted that "[for] landfill securities -- as of February, 1996, there was a reported total of approximately \$2.2 million in the form of post-dated cheques, safekeeping agreements and security funds for three regions in B.C.
6. Although financial assurances are required for waste management sites in Alberta, the Ministry of Environmental Protection has had jurisdiction over landfill only as of September 1996, and currently holds no security. Regional health authorities hold the security for the four sites in Alberta that have been required to post them prior to the change in legislation. It is the understanding of the ministry that the security consists of irrevocable letters of credit sufficient to meet the estimated costs of closure and post-closure care, and may also allow for declining balances based on sinking funds and/or reclamation progress approved by the regulatory authority. Information as to the amount of security was not available.
7. Promissory notes.
8. The exact response was "this department currently holds in the neighbourhood of 100 bonds or securities, at an average value of about \$6,000 each."
9. Figure indicates total value of the insurance policies; one policy provides \$2,500,000.00 coverage for each occurrence.
10. Letter of guarantee.
11. Information regarding assurance held by the Province of Ontario could not be broken down into amounts of security held by type of security. See the sheet that follows "Summary of Financial Assurance Accounts."